

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition No.303-L of 2018

*(On appeal from the judgment dated
29.1.2018 passed by the Lahore High Court,
Multan Bench passed in Criminal Appeal
No.664/2011)*

***Muhammad Shamoon deceased through
legal representatives***

...Petitioner(s)

VERSUS

The State and another

...Respondent(s)

For the Petitioner(s) : Ch. Pervaiz Akhtar Gujjar, ASC

For Respondent No.2 : Mr. Sikandar Javed, ASC

For the State : Ch. M. Mustafa,
Deputy Prosecutor General

Date of Hearing : 30.05.2019

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Muhammad Shamoon (since dead) was indicted alongside his son Muhammad Saleem for homicide, by a learned Addl. Sessions Judge at Chichawatni; vide judgment dated 25-8-2011, he was returned a guilty verdict for *Qatl Shibhi-i-Amd*; sentenced under section 316 of the Pakistan Penal Code 1860, henceforth referred to as "the Code", he was directed to pay *Diyat* in the sum of Rs.10,94,816/- to the legal heirs of the deceased; co-accused Muhammad Saleem was let off with reduction of sentence, already undergone by him. Aggrieved by the judgment, Muhammad Shamoon filed CrI. Appeal No.664/2011; it was admitted for regular hearing on 13-9-2011, subsequent where to, he was released on bail vide order dated 23-4-2012, however, passed away before final adjudication and when the appeal came up for hearing on 29-1-2018, a learned Division Bench of Lahore High Court disposed it of as having abated in the wake of his death. It is in this backdrop that one of

the legal heirs of the deceased, namely, Javed Iqbal made motion dated 29-6-2018 for realization of *Diyat* amount from deceased's estate; pursuant to the process, the estate was attached and this brings deceased's legal heirs to this Court to question the impugned abatement, seeking decision of appeal on merits; Javed Iqbal, respondent has contested the move.

2. Barring whipping provided under special laws, broadly categorized, there are two types of punishments to which offenders are liable under section 53 of the Code; by nature, these are corporal or monetary. Corporal punishments have to be exacted from the person of the offender either through forfeiture of his freedom or even life; these are inseparably linked with his person and wither away with his departure from this World. Death vindicates the charge. Monetary punishment is to be carried out from the assets held by the offender; his death would not absolve the legacy and it is unambiguously evident by the legislative intent manifested in section 386 of the Code of Criminal Procedure, 1898. *Diyat* is amongst the punishments provided under the Code and according to clause (e) of section 299 thereof, it is compensation payable to the legal heirs of the victim, value whereof, is equivalent to 30,630 grams of Silver to be determined on yearly basis. Section 331 of the Code provides that an offender burdened with payment of *Diyat*, in the event of default, shall remain lodged in prison until it is paid in full or through installments settled against security, however, under sub-section (3) thereof, in the event of his death, it shall be recoverable from his estate. A combined reading of section 431 of the Code of Criminal Procedure, 1898 with section 331 of the Code, unambiguously ensure continuation of appeal by an offender liable to payment of *Diyat* even after his death, thus, there was no occasion for the learned Judges in the High Court to short-circuit the proceedings without adjudication on merit. Consequently, Criminal Petition is converted into appeal; same is allowed, the impugned order is set aside. The appeal shall be deemed to be pending before the High Court for decision on merits, after hearing the parties. Above are the reasons of short order of even date whereby the following order was passed:-

"For detailed reasons to be recorded later, the instant criminal petition is converted into an appeal and the same is hereby allowed. The order dated 29.01.2018, passed by the learned High Court, Multan Bench, Multan, whereby criminal appeal filed by the convict Muhammad Shamoan (since dead) was consigned to record as having been abated is set aside. The said appeal shall be deemed to be pending before the learned High Court, which shall be decided on merits after hearing the parties."

JUDGE

JUDGE

JUDGE

Lahore, the
30th of May, 2019
Approved for Reporting
Azmat Ali/*