IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Athar Minallah
Mr. Justice Irfan Saadat Khan
Mr. Justice Malik Shahzad Ahmad Khan

CRIMINAL APPEAL NO.9 OF 2023
(Against the judgment dated 18.09.2014 of the Lahore High Court, Lahore passed in Crl.Appeal No.181-J/2008 and Murder Reference No.228 of 2008)

Tahir alias Tahri ...Appellant(s)

VERSUS

The State ...Respondent(s)

For the Appellant: Mr.Shahid Azeem, ASC

For the State: Mr. Sajjad Hussain, DPG

For the complainant: Mr. M.Ahsan Bhoon, ASC

Date of Hearing: 29.01.2025

JUDGMENT

Athar Minallah, J.-Tahir alias Tahri ('**appellant**') had sought leave and it was granted by this Court vide order dated 09.01.2023, against the judgment of the High Court, dated 18.09.2004, whereby his convictions and sentences handed down by the trial court were upheld. The reference was answered in the affirmative and, therefore, the death sentences on five counts were confirmed.

2. The appellant and four other co-accused were nominated in crime report No.165 dated 06.07.1991. The alleged incident had led to loss of lives by means of the unnatural deaths of five victims. The appellant was arrested on 02.09.1991 and the firearm weapon, which at that time was in his possession, was also recovered. The appellant later escaped from judicial custody on 16.06.1992. The trial court had proceeded under section 512 of the Code of Criminal Procedure, 1898 ('**Cr.P.C.**'). The appellant was convicted and sentenced in absentia by the trial court

vide judgment dated 13.09.1993. Three other co-accused, including the appellants father, Muhammad Yar, Zafar alias Zafar Abbas and Yara alias Allah Yar were tried and they were convicted and sentenced to death by the trial court vide judgment dated 13.09.1993. Their appeals were dismissed and consequently their convictions were upheld and sentences confirmed by the High Court vide judgment dated 10-09-1997. The three aforementioned co-accused challenged the judgment of the High Court before this Court but leave was refused and the petitions were dismissed vide judgment dated 27.10.1999. Subsequently, the sentences of these three co accused were executed on 16.10.2001 and they were hanged by their necks till death.

3. The appellant was again arrested on 03.08.2000. He challenged his convictions and sentences by invoking the constitutional jurisdiction of the High Court and his petition was allowed. The convictions and sentences were set aside and the matter was remanded to the trial court. The trial court, upon conclusion of the trial, convicted and sentenced the appellant to death on five counts vide judgment dated 03.09.2008. The trial court had further ordered payment of compensation to the legal heirs of the deceased and to undergo two years simple imprisonment in default. The convictions and sentences were challenged but the appeal was dismissed by the High Court vide the impugned judgment dated 18-09-2014. The reference was answered in the affirmative. The petition seeking leave was filed by the appellant before this Court in 2014 and it was fixed for hearing for the first time on 22-03-2021 i.e after almost eight years and leave was granted on 09-01-2023. It was finally heard and decided on 29-01-2025 through our short order. When the occurrence had taken place in 1991, the appellant was young, around twenty-one years old. He has remained incarcerated for more than twenty five years in this case as an under

trial prisoner and then as a death convict. He has spent a considerable time in the death cell while his appeal was pending before this Court.

4. We have heard the learned counsel for the appellant and the learned Deputy Prosecutor General, Punjab at great length. We have also perused the record with their able assistance.

5. The appellant was one of the five accused in this case. Three other accused, which included his father, were hanged by their necks till death in 2001, after their convictions and sentences were upheld by this Court. It is not disputed that it was a day light occurrence which had led to the loss of lives of five victims. The ocular account was deposed by Liaqat (PW-2) and Sher Muhammad (PW-3). The role attributed to the appellant in the complaint, as incorporated in the crime report, was two fold i.e firing a 'burst' from a firearm weapon, 'Kalashnikov', while standing behind one of the deceased, Mussarat Abbas, who was seated in the car and then joining the others in indiscriminate firing. All the five accused are alleged to have indiscriminately fired on the five victims jointly in the second limb of the prosecution's story. The prosecution had attributed two distinct roles to each accused; first, a specific role of firing a burst on the back of the head of a specific victim and then attributing a joint role to all the five accused of indiscriminately firing on the five victims who were seated in the vehicle. The medical evidence brought on record by the prosecution regarding the injuries described in the autopsy conducted on the dead body of the deceased victim, Mussarat Abbas, supported the ocular account deposed by the witnesses. Both the witnesses who had deposed the ocular account were consistent in all material particulars and their testimonies have been found by us to be reliable and confidence inspiring. The presence of the

appellant at the crime scene and the role attributed to him was established by the prosecution without a reasonable doubt.

6. The firearm weapon was recovered from the appellant's possession when he was initially arrested on 02-09-1991. The spent bullets recovered from the crime scene were sent to the Forensic Science Laboratory ('**FSL**') before the arrest of the appellant and recovery of the firearm weapon. The report was positive and sixty nine out of ninety eight spent bullets, according to the report, had matched the recovered crime weapon. The ocular account does not indicate that the appellant had changed the magazine of the crime weapon during the commission of the offence so as to justify the matching of sixty nine out of ninety eight spent bullets, while a similar role of first causing injuries to specific victims and then jointly firing indiscriminately was also attributed to four other accused, three of whom were hanged. We have further noted that Younas Ali Butt (PW-12) had entered the witness box on 04-07-2008. The recovered crime weapon (P3), was produced before the trial court. However, the witness had deposed that the condition of the firearm was such that he was not in a position to state whether it was the same which was recovered by him. This testimony obviously raises doubt regarding the reliability of the recovery of the firearm weapon. It was the obligation of the prosecution to prove this factum beyond a reasonable doubt and it failed to do so. It is also noted that the motive set up by the prosecution was that the appellant's father had enmity with the deceased victims. The appellant was young when the occurrence had taken place and he did not have any criminal record before his nomination in this case. It appears that these mitigating factors were not considered by the High Court while determining the quantum of sentence and answering the reference in the affirmative. The prosecution had proved the guilt of the appellant beyond a

reasonable doubt and, therefore, we see no reason to interfere with the convictions handed down by the trial court which were upheld by the High Court. The compensation ordered by the trial court and the sentence in default thereof are also maintained. The conviction and sentence under section 148 of the PPC are also up held. The appeal to this extent is dismissed.

7. The learned counsel for the appellant has argued that in this case there were mitigating factors and, in the circumstances, handing down the sentence of death on five counts was not justified. We have noted some of the mitigating factors and they have been highlighted above. The learned counsel has further argued that the appellant has remained incarcerated for more than twenty five years out of which a substantial period has been served in the death cell. He has, therefore, argued that a right has accrued in his favour to claim commutation of the sentence of death to imprisonment for life on the basis of the rule of expectancy of life. He has argued that if the death sentence is executed at this stage, it would amount to punishing the appellant twice for the same offence because he has already served out more than the full term of one of the prescribed legal punishments i.e imprisonment for life and, that too, without taking into consideration the remissions. He has thus argued that this sole factor entitles the appellant for modification of his sentence of death to imprisonment for life. Is the appellant entitled to claim commutation of his sentence of death to imprisonment for life as of right on the basis of the rule of expectancy of life?

8. The principle of expectancy of life and its scope has been considered by this Court in its earlier judgments and, therefore, it would be beneficial to survey the precedent law to answer the question whether it is a mitigating factor in the context of considering alteration of the

sentence of death to life imprisonment when the sentence of death has been awarded under section 302 (b) of the PPC and, if the answer is in the affirmative, whether on the basis of this principle alone the sentence can be commuted.

9. The question of expectancy of life becomes relevant when a convict has been sentenced to death and has served equal to or more than the term of the other legal sentence prescribed for the same offence. In this case the relevant offence is section 302 (b) of the PPC. The offence of *qatl-i-amd* has been described under section 300 of the PPC while its punishments have been specified under section 302 ibid. The legislature has prescribed the punishments in the case of three distinct categories of *qatl-i-amd*. Clause (a) prescribes only one punishment when the convict has committed the offence and it attracts 'qisas'. In such an eventuality the court does not have the discretion to hand down any sentence other than death. However, in case of ta'zir, section 302(b) provides for two distinct punishments; death or imprisonment for life and it has been qualified to the expression 'having regard to the facts and circumstances of the case'. The court is empowered to award one of these legal sentences.

10. The petitioner in this case has remained incarcerated for more than twenty-five years while awaiting conclusion of his legal remedies and most of this time has been spent in the death-cell. The question is whether he has acquired expectancy of life and whether he may claim a lesser sentence on the basis of a legitimate expectation of not being hanged from his neck because he has already served one of the prescribed punishments. A larger Bench of this Court in Abul Malik's case[1] has considered the question; whether the fundamental right

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[1] *Abdul Malik and others v. The State and others (PLD 2006 SC 365)*

under Article 13 of the Constitution of the Islamic Republic of Pakistan, 1973 ('**Constitution**') is attracted when a convict has already undergone the sentence of imprisonment for life during the pendency of appeal/revision and the latter's enhancement of sentence is being sought. It was held that when the conviction or acquittal are challenged in appeal or revision the question of a second conviction or double jeopardy would not arise because the proceedings nor the prosecution are fresh. The appeal or revision are a continuation of the trial and any alteration of the sentence would not amount to double jeopardy. It was observed that there was no rule of general application that serving out one of the legal sentences provided under section 302(b) of the PPC while pursuing the legal remedies would by itself constitute a bar for enhancement of the sentence. Nonetheless, it was held that this could be one of the factors which the court may take into account with other mitigating factors for the purpose of alteration to a lesser sentence. Broad guidelines have also been set out for a court to consider while it is exercising the discretion of awarding one of the sentences. It was observed that the question of sentence is primarily a matter of judicial discretion and that it is to be exercised in the first instance by the trial court, while the appellate court was not divested of the power or jurisdiction to enhance the sentence if, in its opinion, it was found to be inadequate or not in accordance with the judicial principles laid down by the superior courts. In cases where capital punishment has been prescribed along with another sentence then the law vests a discretion in the courts to award the sentence of death or life imprisonment and a heavy duty is cast while awarding an alternate sentence provided under the law because the court has to balance various considerations such as the circumstances surrounding the offence, the question of *mens rea*, the principle of proportionality of sentence, the gravity of the offence,

the consideration of prevention or of deterrence and rehabilitation. These are some of the factors that have to be kept in mind while awarding one of the legal sentences while keeping in view the circumstances of the case and the applicable law. Another larger Bench of this Court in Dilawar Hussain's case[2] held that section 302(b) of the PPC provided two legal sentences. It was observed that prolonged detention as a result of delay in conclusion and disposal of the legal remedies could entitle a convict to a lesser punishment. It was further observed that the intent of the legislature was to provide two legal sentences under section 302(b) of the PPC and that the law itself has tackled the situation how the court has to exercise discretion in selecting one of those two sentences. It was explicitly observed that it was not the mandate of law nor the dictate of this Court as to what quantum of mitigation is required for awarding imprisonment for life, rather a single circumstance providing mitigation or extenuating circumstance would be sufficient to award a lesser punishment as an abundant precaution. If the court is satisfied that there were reasons due to which the death sentence was not warranted then a court in such an eventuality has no option but to hand down the lesser sentence of life imprisonment. It was further observed that it would be unjust to impose a double punishment by keeping an accused in a death-cell for a long period of time when the delay is also not attributed to the latter and that doing so would be against the principles of justice if the convict was to be hanged by his neck in such an eventuality. It was held that the law had empowered the court to inflict one of the two prescribed punishments and that the courts were vested with discretion to award the sentence of death when the case involved aggravated factors. This Court has stressed that while exercising its discretion in choosing one

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[2] *Dilawar Hussain v. The State (2013 SCMR 1582)*

of the two legal sentences provided under section 302(b) of the PPC utmost care and caution must guide a court. Reference was made to Article 9 of the Constitution and the importance of the value of life and liberty of a human being was highlighted. Reference was also made to the observations of this Court in an earlier judgment[3] where it was observed that it is better to err in favour of the convict rather than against him. It was held that a convict acquires expectancy of life when the incarceration exceeds the term of life imprisonment and this time is spent awaiting the outcome of legal remedies against the conviction. In this case, though the appellant convict had acquired expectancy of life, but the sentence was not altered from death to life imprisonment on this sole ground, rather other mitigating factors were also taken into consideration for alteration of the sentence of death to imprisonment for life. It was thus clear that the rule of expectancy of life could be considered as a mitigating factor in the context of commutation of the sentence of death to imprisonment for life. The principles in this regard and their scope were further explained and enunciated in the later jurisprudence of this Court. In the case of Hassan[4] this Court has elaborately discussed and further highlighted the principles and law regarding the rule of expectancy of life i.e whether a convict acquires expectancy of life after having served out the sentence during the pendency of pursuing legal remedies for a period of custody equal to or exceeding a full term of life imprisonment. The principle was also considered in the context of section 403 of the Cr.P.C. and the fundamental right guaranteed under Article 13 (a) of the Constitution. It was held that the principle of *autrefois* acquit and *autrefois* convict as contemplated under section 403 Cr.P.C. was not attracted because in such an eventuality it was not a new trial after having been convicted

[3]*Shahid Ali v. The State (PLD 1970 SC 447)*
[4]*Hassan and others v. The State and others (PLD 2013 SC 793)*

or acquitted, as the case may be, on the basis of the same facts. Following the enunciation of law by the larger Bench of this Court in Abdul Malik's case (*supra)* it was affirmed that no question of double jeopardy arises while a court is considering the alteration of a sentence in an appeal or revision. The rule of expectancy of life was considered in three distinct situations. (i) When there is unconscionable delay in the final disposal of a legal remedy but the served-out period of incarceration is less than that of imprisonment for life then the principle of expectancy of life for the purposes of reduction of sentence would not be attracted and the trend followed by the courts two decades ago had been abandoned. (ii) The second eventuality considered by the Court was when the enhancement of the sentence was being sought either by the complainant or the State from imprisonment for life to death and before or during the pendency of such recourse the convict has served out the sentence and he or she has been or is yet to be released from the prison then in such an eventuality the principle of expectancy of life would become relevant for exercising discretion against enhancement of the sentence. In this regard this Court has referred to Article 13 (a) of the Constitution and has held that though it would not be directly attracted but its spirit ought to be considered along with other factors and, lastly, (iii) a situation where the convict sentenced to death has served a period of custody equal to or more than a full term of imprisonment during pendency of his judicial remedy against conviction and sentence, then the principle of expectancy of life may be a relevant factor to be considered along with other factors for reducing the sentence of death to imprisonment for life. In the light of the principles laid down by the larger Bench in Dilawar Hussain's case (*supra)* it was observed that withholding the benefit of the principle of expectancy of life may be oppressive if not unjust. This Court has further held that in

such an eventuality Article 13(a) of the Constitution is not attracted because alteration of a sentence involves the question of propriety of the sentence and exercise of discretion by a court and it is not an issue of right. It was further observed that the principles enunciated by the Court will not be applicable to any delay if it is caused by the Executive in processing or deciding a convict's mercy petition or in executing the sentence after the judicial remedies have been exhausted or when the delay is demonstrably and significantly attributed to the convict himself. These parameters and principles were later affirmed by another larger Bench of this Court in Khalid Iqbal's case[5] . While referring to the earlier judgment in Dilawar Hussain's case *(supra)* it was observed that it did not lay down the principle of awarding lesser punishment on the ground of acquiring expectancy of life as a sole mitigating factor when the convict has undergone or served out one of the legal sentences. This Court reaffirmed the principle enunciated in Abdul Malik's case *(supra)* that this will be one of the factors which the court may consider while deciding the quantum of sentence. It was emphasized that the question of sentence was a matter of judicial discretion and that it essentially depended on the circumstances of each case and that no principle of general application could be laid down. The larger Bench in this case affirmed the principles and the parameters laid down in Hassan's case (*supra)* .It was, therefore, held that in a case where the convict has acquired the expectancy of life by remaining incarcerated for a period equal to or more than the punishment prescribed under section 302(b) PPC then this could be considered as one of the factors towards mitigating circumstances for commuting the sentence of death to life imprisonment. It was held that every convict sentenced to death or imprisonment for life and who has served a full term of imprisonment

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[5]*Khalid Iqbal and others v. Mirza Khan and others (PLD 2015 SC 50)*

for life during pendency of his legal remedies does not become entitled to avoid the death sentence if there are other factors which warrant otherwise. The above discussed principles regarding expectancy of life have been consistently followed and affirmed by this Court[6].

11. It is obvious from the above survey of the jurisprudence of this Court that the principle of expectancy of life is relevant in the context of section 302 (b) of the PPC when the convict who has been handed down the sentence of death has served equal to or more than the term of the other prescribed legal punishment, i.e imprisonment for life during pendency of the legal remedies provided under the law. It would also become relevant when the enhancement of the sentence to death has been sought while the convict has already served out the sentence of imprisonment for life and has been or is yet to be released. In the latter case the discretion must be exercised in favor of the principle of life expectancy and, therefore, against the enhancement, keeping in view the spirit of Article 13(a) of the Constitution. In case of the former eventuality, the principle of expectancy of life could be considered as a crucial mitigating or extenuating circumstance for considering modification of the sentence from death to imprisonment for life. However, this principle by itself and as a sole mitigating factor would not be sufficient for a court to exercise its discretion by commuting the sentence of death to imprisonment for life. This could be definitely one of the factors to be taken into consideration along with some other or more than one mitigating factors. There was no general rule that serving out one of the legal sentences provided under section 302 (b) of the PPC while pursuing the legal remedies would by itself entitle a convict to seek alteration of his or her sentence. The principle enshrined in section 403

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[6]*Ghulam Rasool v. The State (2025 SCMR 74), Khalid v. The State (2024 SCMR 1474) and Sikandar Hayat and another v. The State and others (PLD 2020 SC 559)*

of the Cr.P.C is not attracted nor does the principle of expectancy of life entitle a convict to claim protection of the guaranteed right under Article 13(a) of the Constitution for the purposes of seeking modification of the sentence of death to imprisonment for life as of right.

12. There could be certain consequences on account of the prolonged delay in execution of the sentence of death which, in the facts and circumstances of a particular case, may become a valid mitigating factor and extenuating circumstance for a court to take into consideration along with the principle of expectancy of life for altering the sentence. A distinction must be drawn between the time elapsed during the period considered necessary and reasonable for the appeal process to come to an end and the time beyond that. The pain and suffering suffered by a condemned prisoner or being exposed to uncertainty and mental anguish while awaiting the outcome of the appeal process within the time necessary for its completion is an inevitable consequence of a death sentence and thus not a factor which would be sufficient for an accused to acquire an expectation. However, the problem arises when the delay is on account of factors which are outside the control of the condemned prisoner and it exceeds the necessary time required for completion of the appeal process. It may be on account of multiple factors, including the inefficiency and unresponsive administration of the criminal justice system. The delay may be so inordinate and long which may demonstrably surpass the reasonable and necessary time required for completion of the remedies available under the law for availing remedies against conviction and sentence in case of offences which prescribe capital punishment. The collateral and ancillary consequences of unnecessary and unreasonable delay in the completion of the appeal procedures and other remedies provided under the law may become independent mitigating or extenuating factors depending on the facts

and circumstances in each case. This could be illustrated in the context of the two legal punishments provided under section 302 (b) of the PPC. It provides for the punishment of death or imprisonment for life. A trial court, upon conclusion of trial, has the discretion of handing down one of these prescribed legal punishments. It does not empower the trial court nor any other court to award both the punishments simultaneously. This definitely is not intended by the legislature. The term required to be served in case of imprisonment for life has been interpreted and specified by this Court. This Court in the Hassan's case (supra) has declared it to be oppressive if an accused after serving the complete term of sentence prescribed for imprisonment for life is then hanged. But according to the jurisprudence of this Court it cannot be a sole factor for commutation. There is yet another punishment not even provided under the law which a condemned prisoner may also have to suffer as a collateral consequence of inordinate prolonged delay while awaiting for the outcome of the appeal procedure; to be subjected to torture or inhuman and degrading treatment by keeping him incarcerated in inhumane and deplorable conditions. The incarceration in a prison only restricts a person's liberty and does not take away the other guaranteed rights, inter alia, of fair trial, right to life and the inviolability of the right to dignity. The alternate legal sentence of imprisonment for life does not, by any stretch of the imagination, include the object of subjecting a convict to cruel or unnecessary pain and suffering. The delay in execution of a death sentence, when it is not even attributed to the convict, subjects the latter to unimaginable mental distress and agony. But it could be exasperated if the living conditions of the prison where the convict has been incarcerated falls below the minimum standards required to be maintained so that a legally prescribed punishment does not become an unauthorized and

illegal punishment not prescribed under any law. Article 12 (b) of the Constitution mandates that no law shall authorize the punishment of a person for an offence by a penalty greater than or of a kind different from the penalty prescribed by law for that offence at the time the offence was committed. It is settled law that what cannot be done directly can also not be done indirectly. No law even retrospectively can legalize imposition of the two punishments prescribed under section 302(b) of PPC simultaneously let alone validating a punishment not even prescribed under any law. One of the High Courts, in its judgment in the case of Khadim Hussain[7], has referred to a report of a Commission constituted by the Federal Government wherein the living conditions of prisons were highlighted. It reported the presence of significant numbers of prisoners who were suffering from contagious diseases such as HIV, Hepatitis and Tuberculosis. Most of the prisons are overcrowded and the living conditions are cruel and inhumane. Incarceration of the convicted prisoners in death cells for inordinately long periods in such conditions, while they are waiting for the outcome of the legal remedies, becomes an unauthorized punishment not contemplated by the legislature under section 302 (b) of the PPC. The legislature while prescribing the two alternate punishments under section 302(b) of PPC had not intended that a convict in addition would also be subjected to torture by treating him or her, as the case may be, in a cruel, inhumane and degrading manner. The condemned convict has no option and is, therefore, compelled to suffer the agony of an unauthorized punishment. Such an unauthorized punishment amounts to a penalty greater than or of a kind different from the penalty prescribed by law for the offence at the time it was committed. When the death sentence confirmed under section 302(b) of PPC is executed after the convict has

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[7] *Khadim Hussain v. Secretary, Ministry of Human Rights, Islamabad and others (PLD 2020 Islamabad 268)*

served the prescribed term for imprisonment for life then such a condemned prisoner will suffer and inflicted with three distinct punishments not envisaged under section 302 (b) of the PPC. It would be a grave travesty of justice and an affront to the administration of the criminal justice system. It would amount to violation of the right guaranteed under Article 12(b) of the Constitution. In such an eventuality, execution of the sentence of death would mean serving out the other alternate legal punishment of imprisonment for life and in addition enduring the unauthorized penalty of being subjected to cruel, inhumane and degrading treatment. Depending upon the facts and circumstances of a case, the living conditions of the prison where the condemned prisoner has served his or her sentence after confirmation of the death sentence could be considered as one of the mitigating factors and it can then be taken into account along with principle of expectancy of life. No court can give legitimacy to an unauthorized punishment nor allow a person to be inflicted with a penalty greater than a kind prescribed under the law. However, no hard and fast rule can be laid down regarding the commutation of the sentence of death to imprisonment for life because it ultimately falls within the ambit of discretion of a court and depends on the facts and circumstances of each case. Nonetheless, depending on the facts and circumstances, the convict may become entitled to claim damages from the State and public functionaries for being treated in such a manner because it would amount to committing tortious acts.

13. In this case the mitigating factors have been highlighted above. The appellant has remained incarcerated for more than twenty five years. The appellant had escaped from judicial custody and that obviously constitutes a separate offence and, therefore, it would not be appropriate for us to make any observation lest it may prejudice the

case of the parties in any matter that may be pending before a competent court/forum. The appellant was young in 1991 when the occurrence had taken place. He was accompanying his father and the motive was attributed to him and not the appellant. It cannot be ruled out that the appellant may have acted under the influence of his elders, particularly his father. He did not have any criminal record prior to the occurrence and, therefore, he was a first time offender. As already noted above, the recovery of the fire arm weapon is not free from doubt and the evidence brought on record in this regard is not safe to be relied upon. In addition to these recognized mitigating factors, the appellant has served the full term prescribed for the alternate punishment of imprisonment for life without the benefit of remissions. We are, therefore, of the opinion that on account of these mitigating and extenuating circumstances, the sentence of death on five counts was not justified. We, therefore, partly allow the appeal only to the extent of modifying the sentence of death on five counts to imprisonment for life on five counts. The sentences, except those required to be served in default of payment of compensation, shall run concurrently. The benefit under section 382 b of Cr. P.C is extended in favour of the appellant.

14. The above are our reasons for partly allowing the appeal vide our short order of even date.

15. Before parting with this judgment, we feel constrained to record our observations regarding the abysmal condition of the criminal justice system in general and the unjustified delays in the ultimate disposal of cases in which the appellant or petitioner has challenged the sentence of death. In the case before us, the appellant was sentenced to death by the trial court on 03.09.2008. The appeal was preferred within time. The High Court decided the appeal on 18.09.2014 and the reference was

answered in the affirmative and, thus, the sentence of death was confirmed. There is six years delay in deciding the appeal of a prisoner who has been handed down the sentence of death which cannot be justified. The necessary time for taking up the appeal and its ultimate disposal should not have been more than twelve months. The appellant had then sought leave by filing a petition before this Court and the necessary and reasonable time required for its final disposal should not have been more than twelve months. The petition, which was filed in 2014, was for the first time fixed for hearing after seven years i.e on 22.03.2021 and finally on 29.01.2025. It took more than seventeen years for the appeal process to complete from the date when the death sentence was handed down. The condemned prisoner was in a death cell and he was not responsible in any manner for this inordinate delay nor were the procedures in his control. The delay had definitely exceeded the necessary and reasonable time required for the appellate procedures to be completed. This inordinate delay brings the criminal justice system into disrepute and undermines the confidence of the people in the courts and the criminal justice system. The abysmal conditions in most of the overcrowded prisons across the country and the inhumane and degrading conditions often reported not only adds to the unimaginable agony and hardship of a condemned prisoner but becomes a form of unauthorized punishment not intended by the legislature. The judiciary is no doubt responsible when the process of appeal exceeds the necessary and reasonable time required for its completion, but the other branches of the State, the executive and legislature, are also equally responsible for ensuring that the conditions in the prisons are humane and that the treatment of prisoners is not cruel, inhuman and degrading. It is an onerous task of the High Courts and this Court to ensure that the appeal process and remedies provided

under the law are completed within the time which is necessary and reasonable for this purpose. The executive branch is equally responsible to ensure that treatment of the inmates of a prison is not cruel, degrading and inhumane. The legislature is also expected to review the legislation with the object of making the criminal justice system responsive to the needs of the citizens and accountable for violations of their rights. The unauthorized punishment which an inmate of a prison is forced to endure on account of a compromised, weak and failing justice system cannot be legalized nor condoned. We have noted with concern that most of the victims of the inordinate delays in completion of the appellate process are those who are financially so weak that they cannot even afford to engage a lawyer of their choice. It appears that the criminal justice system, from the stage of investigation to the fixation of appeals, is vulnerable to be exploited by the privileged and powerful while the victims are those who belong to politically, economically and socially marginalized and underprivileged classes. Every branch of the State having a role in the running of the criminal justice system is under an obligation to take urgent steps to remedy the wrongs. A system which fails in protecting and enforcing the rights alienates the actual stakeholders; the people of this country. A weak and compromised criminal justice system undermines the rule of law and thus encourages corruption, authoritarianism and the rule of the powerful and privileged instead. An effective and responsive criminal justice system, free from political interference and corruption, is a fundamental right of every citizen while inexpensive and expeditious justice is a commitment of the State under the Constitution. The criminal justice system will only serve its purpose when the actual stakeholders, the people of this country, will have trust and confidence in a system which is free, accessible, impartial, responsive, independent and free from corruption or any

other influence. It is, therefore, a constitutional duty of every organ of the State, the executive, judiciary and the legislature to take urgent steps so as to ensure that the criminal justice system serves the people of this country and they repose their trust and confidence in its fairness, impartiality and independence.

Judge

Judge

Judge

Islamabad the
29th January, 2025
'APPROVED FOR REPORTING'
(Aamir Sh./Rameen Moin.LC)