

SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed
Mr. Justice Mushir Alam
Mr. Justice Maqbool Baqar

Criminal Review Petitions No.15 to 18 of 2011

[For review of common Judgment dated 21.04.2011 passed by this Court in Criminal Appeals No.167 to 170 of 2005]

***Mst. Mukhtar Mai d/o Ghulam Farid
Meerwala, Tehsil Jatoi, Muzaffargarh***

[in all cases]
...***Petitioner(s)***

VERSUS

***Abdul Khaliq & others
Faiz Muhammad & another
Muhammad Aslam & others***

[in Cr.R.P.15&18]
[in Cr.R.P.16]
[in Cr.R.P.17]
...***Respondent(s)***

For the Petitioner(s) : Ch. Aitzaz Ahsan, Sr. ASC
[in all cases] Mr. Gohar Ali Shah, ASC

For the Respondent(s) : Malik Muhammad Saleem, ASC
[in all cases]

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

Date of Hearing : 13.06.2019

J U D G M E N T

GULZAR AHMED, J.— These Criminal Review Petitions have been filed seeking review of common judgment of this Court dated 21.04.2011 passed in Criminal Appeals No.163 to 171 of 2005 and SMC No.5 of 2005.

2. Brief facts of the matter are that FIR No.405 dated 36.06.2002 was got registered by the petitioner with Police Station Jatoi, District Muzaffargarh under Section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (**the Ordinance 1979**) read with Section 109 of Pakistan Penal Code, 1860 (**PPC**).

Subsequently, Section 19 of the Ordinance 1979 was added along with Sections 354-A, 217, 119 and 342 PPC so also Section 7 of the Anti-Terrorism Act, 1997 (**ATA**). The trial was conducted, on conclusion whereof the trial Court passed its judgment dated 31.08.2002 on the basis of which, out of 14 accused persons 8 accused were acquitted while the remaining 6 accused were found guilty and were convicted and sentenced, as noted the said judgment. However, all the accused were acquitted of the charge under Section 354-A PPC. Both the complainant as well as the State filed criminal appeals before the Lahore High Court challenging judgment of the trial Court. The acquittal appeals were dismissed by the High Court while the appeals filed by the convicted accused were accepted except that of the convicted accused Abdul Khaliq, whose appeal was partly allowed and his capital punishment was converted into imprisonment for life with benefit of Section 382-B Cr.P.C. Criminal Appeals were filed against judgment of the High Court dated 03.03.2005 by the State, by the Complainant and also by the convicted accused Abdul Khaliq, while Suo Motu Case No.5 of 2005 was also registered by this Court. The criminal appeals as well as the SMC were heard together by a 3-Member Bench of this Court, which through the judgment under review dismissed the appeals and discharged the SMC.

3. The learned Sr. ASC for the petitioner while arguing the criminal review petitions has made the following formulations:

- 1) *Whether any, and if so, what kind of corroboration is required for the testimony of rape victim;*
- 2) *Whether a distinction can be drawn between a victim who is a virgin and one who is a divorcee in respect of her credibility in a prosecution for rape;*
- 3) *Whether confessions made in cross-examination will not adversely affect the defence, particularly in a case wherein the accused has stated in his statement under section 342 Cr.P.C. that his defence is the same as put in cross-examination by his counsel;*
- 4) *Whether the Charge under section 354-A PPC which relates to someone being paraded nude in public can be defended by the accused by merely stating that the victim was handed back her clothes;*

- 5) *What is the effect of misreading and non-reading of evidence regarding the injuries on the body of the victim;*
- 6) *What is the guilt of the persons forming part of an Akath/tribal Jirga/Panchayat who sit and join the same, as a result of which a gang rape is permitted/committed;*
- 7) *How far modern technics like DNA can be insisted upon by the Court in crimes committed in a far-flung rural area where it is not easy to have access to these technics.*

4. We have brought to the attention of the learned Sr. ASC for the petitioner that the formulations made by him, as reproduced above, are such which require re-appraisal of the entire evidence and thereafter to take a view different from the one which has been taken by this Court in the judgment under review and that such course of action is not permissible under the law for that while exercising review jurisdiction the reviewing Court cannot go into the merits of the case and take altogether a different view, the learned Sr. ASC for the petitioner frankly conceded that he is aware of this legal obstruction but insisted that the Court may examine the above formulations made by him.

5. We have considered the above formulations and have also gone through the judgment under review. At the outset, we may note that all the formulations and submissions of the learned Sr. ASC, as noted above, appear to be based on the assumption that this Court is sitting as a court of appeal over the judgment under review, which jurisdiction obviously is not vested in this Court under Article 188 of the Constitution, as the Court hearing review cannot re-appraise the evidence to come to a conclusion different from the one adopted by the Court in the judgment under review. All the

formulations and submissions of the learned Sr. ASC are based materially on the evidence on record, meaning thereby that the Court, exercising review jurisdiction, is required to read the evidence, the very such exercise, in our view, is not permissible in law while sitting in review jurisdiction. It is now well settled that the power of review stems from the possibility of judicial fallibility and is exercised in exceptional circumstances, in aid of justice, to avoid gross injustice and in view of the necessity to avoid perpetuating such illegality, which cannot be allowed to remain on the record. A review is not synonymous with an appeal and does not include rehearing of the matter in issue nor will be warranted merely because the conclusion drawn is wrong or erroneous but is limited to eventualities where something obvious has been overlooked or where there is a glaring omission or patent mistake of fact or law, which is self-evident, manifest and floating on the surface, materially affecting the outcome of the adjudicatory process. Reliance in this behalf may be made to the case reported as Zakaria Ghani & 4 others v. Muhammad Ikhtlaq Memon & 8 others [PLD 2016 SC 229].

6. The formulations of the learned Sr. ASC do not seem to attract any of the provisions under which the review jurisdiction could be exercised by this Court and thus, we are of the considered view that the present review petitions are not justifiable and are liable to be dismissed on this score alone. Needless to observe that the formulations and

submissions, as they appear, are such which can be raised and addressed by this Court in an appropriate proceeding in some other case attracting the same, however, in the instant case under the review jurisdiction, where this Court has already given its judgment, these formulations and submissions cannot be gone into.

7. Thus, for the above reasons, the criminal review petitions are dismissed. Consequently, all the criminal miscellaneous applications filed in these criminal review petitions are disposed of.

JUDGE

Bench-II
ISLAMABAD
13.06.2019
APPROVED FOR REPORTING
Hashmi

JUDGE

JUDGE