

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Maqbool Baqar
Mr. Justice Syed Mansoor Ali Shah

Criminal Appeals No. 201 and 202 of 2018

(Against the judgment dated 28.03.2017 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in criminal Revisions No. 382 and 428 of 2016)

Syed Azhar Hussain Shah *(in Cr. A. 201 of 2018)*
Rafi Ullah Jan *(in Cr. A. 202 of 2018)*

...Appellants

versus

The State, etc. *(in both cases)*

...Respondents

For the appellants:

Mr. Hassan Raza Pasha, ASC
(in Cr. A. 201 of 2018)
Mr. Asadullah Khan Chamkani, ASC
(in Cr. A. 202 of 2018)

For the complainant:

Malik Waheed Anjum, ASC
(in both cases)

On Court's Notice:

Syed Nayyab Hussain Gardezi,
Deputy Attorney-General for
Pakistan
Barrister Ghulam Shabbir Shah,
Additional Advocate-General, Sindh
Mr. Salim Akhtar, Additional
Prosecutor-General, Sindh
Mr. Ayaz Sawati, Additional
Advocate-General, Balochistan
Mr. Qasim Ali Chohan, Additional
Advocate-General, Punjab
Mr. Ahmed Raza Gillani, Additional
Prosecutor-General, Punjab
Mr. Zahid Yousaf Qureshi,
Additional Advocate-General,
Khyber Pakhtunkhwa
Syed Baqaq Shah, State Counsel
(in both cases)

Date of hearing:

10.01.2019

JUDGMENT

Asif Saeed Khan Khosa, J.:

Criminal Miscellaneous Applications No. 3 & 8 of 2019 and 2103, 2074, 2075, 2076, and 2077 of 2018 in Criminal Appeal No. 201 of 2018

These miscellaneous applications are allowed and the documents appended therewith are permitted to be brought on the record of the main appeal. Disposed of.

Criminal Appeal No. 201 of 2018

2. Syed Azhar Hussain Shah appellant was booked and tried in case FIR No. 66 registered at Police Station Saddar Talagang, District Chakwal on 06.05.2014 in respect of an offence under section 324, PPC read with section 34, PPC and upon completion of the trial he was convicted and sentenced by the trial court for offences under sections 324, 334 and 336, PPC. For the offence under section 324, PPC the appellant was sentenced by the trial court to rigorous imprisonment for seven years and a fine of Rs. 2,00,000/- or in default of payment thereof to undergo simple imprisonment for one year. On appeal the Court of Session upheld and maintained all the convictions and sentences of the appellant recorded by the trial court except the sentence passed against him for the offence under section 324, PPC which was reduced by the Court of Session to rigorous imprisonment for four years and a fine of Rs. 1,00,000/- or in default of payment thereof to undergo simple imprisonment for six months. A revision petition filed by the appellant before the High Court in that regard was subsequently dismissed and the convictions and sentences of the appellant recorded by the Court of Session were upheld and maintained. Hence, the present appeal by leave of this Court granted on 16.03.2018.

3. On 16.03.2018 leave to appeal had been granted by this Court and various questions were framed which needed consideration. The said questions are reproduced below:

- “(i) Whether Magistrate empowered u/s 30 read with section 35 Cr.P.C. is competent to try offences which are punishable with *Diyat* or *Arsh* which has not been specifically mentioned therein because these are entirely new punishments provided under the new dispensation of justice after the introduction of *Qisas* and *Diyat* laws based on Islamic injunction, now permanent part of the PPC.
- (ii) Whether the trial held by the Magistrate in these two petitions awarding *Diyat* and *Arsh* respectively, in case the first point is answered in the negative, would not become *coram non judice* and without jurisdiction and the conviction so awarded would be liable to set at naught.
- (iii) The learned Additional Prosecutor General pointed out that vide Act No. II of 1997 the punishment by way of *Arsh* and *Daman* was for the first time included through Amendment Act in clause A of section 32 of Cr.P.C. conferring jurisdiction on the Magistrate empowered u/s 30 to award such punishment and whether the *Diyat* is thus not excluded because after the new amendment it was not included to fall within the jurisdiction of the Magistrate so empowered.
- (iv) Whether the organs specified in different provisions of the PPC with regard to partial pairment or complete impairment of organs or pair of organs, the *Diyat* amount can exceed fixed for *Qatl-e-Amad* by the government from time to time and which Court have jurisdiction in that case too.
- (v) Whether the organs specifically mentioned in the relevant chapter of the PPC for the purpose of awarding *Diyat*, *Arsh* or *Daman* would exclude the internal organs in the human body in case it is injured, if the injuries enter in the cavities of trunk of human body i.e. cranium cavity, chest cavity and abdominal cavity. And whether these organs can be brought at par with those specifically mentioned in different provisions of the PPC and if not, then how a punishment can be awarded for that and whether the provision of sections 336 and 337-D would resolve the dispute or not.”

With the assistance of the learned counsel for the parties and the learned Law Officers we have attended to the said questions.

4. According to the Second Schedule to the Code of Criminal Procedure, 1898 an offence under section 324, PPC is triable by a Court of Session and the said Schedule had been appended to the Code by virtue of the provisions of section 28 of that Code whereas section 30 of the said Code clearly provided that notwithstanding anything contained in sections 28 and 29 of the Code the Provincial Government may invest any Magistrate of the first class with power to try as a Magistrate all offences not punishable with death. In the case in hand the trial of the appellant was conducted by a Magistrate invested with such power under section 30 of the

Code and, thus, there was no jurisdictional infirmity *vis-à-vis* the authority of the concerned Magistrate to try the appellant for offences under sections 324, 334 and 336, PPC. It may be true that section 34 of the Code provides that the Court of a Magistrate specially empowered under section 30 of the Code may pass any sentence authorized by the law except the sentence of death or imprisonment for a term exceeding seven years but that limitation on the sentence to be passed by a Magistrate only regulates the punishment and not the jurisdiction of the Magistrate to try an offence. In the order granting leave to appeal some reference had also been made to the issue of payment of *Diyat vis-à-vis* trial of a case by a Magistrate but we note that by virtue of the provisions of section 299, PPC *Diyat* is relevant only to a case of death of a victim and the quantum of *Diyat* is governed by the provisions of section 323, PPC whereas the case in hand was a case regarding offences under sections 324, 334 and 336, PPC wherein the victim had actually survived. In this view of the matter any issue regarding *Diyat* appears to be hardly relevant to the case in hand. These observations made by us take care of most of the questions raised in the order granting leave to appeal and we have also noticed in this respect that some observations made in the case of Allah Wasaya and others v. Sikandar Hayat and others (2012 SCMR 193) had also clarified the relevant issues mentioned in the order granting leave to appeal .

5. As regards the merits of the case of the appellant we have found that the occurrence in this case had taken place in broad daylight, an FIR in that respect had been lodged with sufficient promptitude and the appellant had been named in the FIR as the principal perpetrator of the alleged offences and firearm injuries on the thigh, penis and below the belly of the victim had been attributed to him therein. The eyewitnesses produced by the prosecution included the injured victim namely Syed Ahsan Raza Shah (PW1) and the ocular account furnished by the victim and Syed Muhammad Raza (PW2) was consistent and the same had found full support from the medical evidence. Both the courts below had undertaken an exhaustive analysis of the evidence

available on the record and had then concurred in their conclusion regarding guilt of the appellant having been proved to the hilt and upon our own independent evaluation of the evidence we have not been able to take a view of the matter different from that concurrently taken by the courts below. The appellant has already been treated leniently in the matter of his sentences. We, however, note that his sentences of imprisonment had not been ordered to run concurrently to each other which relief ought to have been extended to him.

6. For what has been discussed above this appeal is dismissed, the convictions and sentences of the appellants recorded by the Court of Session are upheld and maintained and it is clarified that the benefit under section 382-B, Cr.P.C. shall be extended to the appellant and all his sentences of imprisonment shall run concurrently to each other. This appeal is disposed of in these terms.

Criminal Appeal No. 202 of 2018

7. The legal questions raised in the order granting leave to appeal have been answered by us today in the connected Criminal Appeal No. 201 of 2018. In view of the judgment rendered in the said connected appeal no occasion has been found by us for interference with the impugned orders passed by the courts below in the present case. This appeal is, therefore, dismissed.

Judge

Judge

Judge

Islamabad

10.01.2019

Approved for reporting.

Arif