

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial, CJ
Mr. Justice Munib Akhtar
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition No.1596 of 2021

(Against the order dated 30.6.2021 passed by the High Court of Balochistan in Cr. A. No.175-2014)

Shams ul Islam Khan

.....Petitioner(s)

Versus

Azhar Ahmed Khan and another

...Respondent(s)

For the Petitioner(s): Mr. Naeem Bokhari, ASC

For the State: Syed Pervaiz Bokhari, Addl. P.G.
Balochitan

For Respondent No.1: In person.

Date of Hearing 07.02.2022.

ORDER

Qazi Muhammad Amin Ahmed, J.- The petitioner is in receipt of a guilty verdict returned by the learned Addl. Sessions Judge-IV Quetta in a complaint instituted by Azhar Ahmed Khan, no other than his paternal nephew; he alongside his brother Saif-ul-Islam Khan, since dead, was indicted for depriving female legatees from their shares in the legacy. Convicted under sections 466, 467, 474 and 498-A read with section 34 of the Pakistan Penal Code, 1860, they were to periods of imprisonments ranging from 5 to 10 years with direction to pay fine; sentences to be commuted concurrently, pre-trial period inclusive, vide judgment dated 20.6.2014. The High Court of Balochistan reduced quantum of sentence under section 498-A to 5-years whereas on the remainder counts, to 1-year, vide judgment dated 30.6.2021, leave to appeal wherefrom has been prayed for on the grounds that there was no occasion for the High Court to decline petitioner's appeal inasmuch as the prosecution had failed to come up with "*proof beyond doubt*" before the learned trial Court; it is next argued that the fate of indictment is

decisively linked with the outcome of civil litigation still raging between the parties. It is lastly argued that both the Court escaped notice of Criminal Law (Third Amendment) Act 2011 that inserted Chapter XX-A in the Pakistan Penal Code incorporating section 498-A w.e.f. the 28th of December, 2011, and, thus, the petitioner, according to prosecution's own case, has been convicted in violation of Constitutional protection against retrospective punishment. Contentions raised need consideration. Leave is granted. Notice shall issue to the State.

Chief Justice

Judge

Judge

Islamabad, the
7th February, 2022
Azmat/-