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FORTNIGHTLY CASE LAW BULLETIN

(01-04-2023 to 15-04-2023)

A Summary of Latest Judgments Delivered by the Supreme Court of Pakistan & Lahore High Court, Legislation/Amendment in Legislation and important Articles

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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CORRIGENDUM

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1. Supreme Court of Pakistan
K-Electric Limited through its CEO, Karachi v. Federation of Pakistan through Secy. M/o Energy and thr. Secy. M/o Finance Pakistan Secretariat, Islamabad and other.
C.A.1011/2020 to CA.1119/2020, CA.1185/2020 to CA.1191/2020, CP.3428/2020, CP.1145-K/2020, CP.3775/2020 to CP.3780/2020.
Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1011_2020.pdf

Facts: The Appellants before the Court are K-Electric Limited and the consumers of electricity supplied by K-Electric, who have all collectively challenged the impugned judgment, passed by the High Court of Sindh, Karachi. Leave was granted on 27.11.2020 to consider whether the disputed Corrigendum dated 22.01.2020 is enforceable against the consumers of K-Electric.

Issues: i) With whom authority to determine the tariff and adjust electricity based subsidies in the tariff lies?
ii) What is subsidy and how long it remains operative?
iii) Whether the subsidy merges in tariff?
iv) Whether subsidy is outcome of decision of NEPRA?
v) Whether the consumer can claim subsidy as a matter of right?
vi) Whether High Court has jurisdiction to calculate the tariff?

Analysis: i) The Act and the Policy Guidelines, all make clear that NEPRA determines the tariff, be it annual, multi-year or uniform and the Federal Government notifies the tariff. So far as any adjustments to the tariff are concerned, they are also to be made by NEPRA, whether it is under Section 31 of the Act, being a monthly adjustment or under the 2014 Guidelines, being quarterly or bi -annual adjustment. The SOT is also to be issued by NEPRA, detailing the tariff and the charges it contains. Hence, the impugned judgment could not have declared the manner in which K-Electric should charge consumers for peak hours and off-peak hours based on the Federal Government subsidy. This squarely falls within the domain of NEPRA. Furthermore, tariff determination is a complex and technical process, for which, NEPRA has been established. A detailed regime exists with procedures, process and guidelines on tariff determination which in no manner empowers the Federal Government to determine or adjust the tariff. This is the clear mandate of the Act yet for some reason confusion persisted with reference to K-Electric and its uniform tariff, possibly due to its unique nature. However, the 2021 Policy have made clear to the Federal Government that they cannot determine the uniform tariff nor make adjustments to the tariff nor issue any SOT even for K-Electric as this must be done by NEPRA.
ii) The Federal Government is well within its right to introduce, modify or withdraw subsidies. This is an integral part of its socio-economic policies, which NEPRA must give effect to as per Section 31 of the Act. So a consumer of

electricity is entitled to a subsidy as long as it is offered by the Federal Government and is bound by any modifications or withdrawals made by the Government. To give effect to a subsidy it is built into the tariff, as its obvious outcome is to reduce the price of electricity. So a subsidy is given effect through the tariff. There is no vested right in favour of the consumer with reference to a subsidy, simply because the subsidy is built into the tariff. Effectively, a subsidy is a relief package offered to consumers and remains operative for as long as it is required as per Government policy.

iii) In order to take the benefit of the subsidy, it has to be calculated in terms of the tariff, therefore, even if, it is reflected as a part of the tariff or separately it remains a subsidy and does not merge into the tariff.

iv) Essentially, it is based on a policy decision of the Federal Government and is not the outcome of a NEPRA determination. As per Section 31 of the Act, NEPRA is guided by government policies and must consider them, which means that it must reflect the subsidy through the tariff.

v) There is no vested right in favour of the consumer with reference to a subsidy, simply because the subsidy is built into the tariff. Effectively, a subsidy is a relief package offered to consumers and remains operative for as long as it is required as per Government policy. (…) the Consumers have no vested right to claim the benefit of a subsidy, which is based on Government policies.

vi) High Court had no jurisdiction to calculate the tariff as a dispute pertaining to the tariff should be decided by NEPRA.

Conclusion: i) Tariff determination is a complex and technical process, for which, NEPRA has been established. Only NEPRA can determine the tariff and adjust electricity based subsidies in the tariff. Federal Government notifies the tariff.

ii) A subsidy is a relief package offered to consumers and remains operative for as long as it is required as per Government policy.

iii) Subsidy even if is reflected as a part of the tariff or separately it remains a subsidy and does not merge into the tariff

iv) Subsidy is based on a policy decision of the Federal Government and is not the outcome of a NEPRA determination.

v) Consumers have no vested right to claim the benefit of a subsidy, which is based on Government policies.

vi) High Court has no jurisdiction to calculate the tariff as a dispute pertaining to the tariff should be decided by NEPRA.

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2. **Supreme Court of Pakistan**
Nawabzada Abdul Qadir Khan v. Land Acquisition Collector Mardan & others etc.
C.A.364-P/2019 etc
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Jamal Khan Mandokhail, Mrs. Jutice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._364_p_2019.pdf

Facts: Through instant Appeals, the Appellants have challenged a judgment of the High Court, whereby Regular First Appeals were allowed and the judgements and decrees of the Additional District Judge-VIII/Judge Referee Court were modified to the extent that the quantum of compensation for all the land acquired under notification dated 16.09.2008 was set at Rs.125,000/- per marla.

Issues: i) How many matters are need to be taken in consideration by a Referee Court while determining compensation for land acquired under the LAA 1894?

ii) What will be the effect whenever a government exercises its eminent domain under the LAA 1894?

iii) What is the intention of the legislature behind Section 23 while determining compensation?

iv) Whether the word "interest" in Section 34 of the LAA 1894 is interest stricto sensu and what is its purpose?

v) Whether the state and the landowners are equal in terms of bargaining power?

vi) Whether the consent from the affected land owners is required under the law before the state can exercise eminent domain under the LAA 1894?

Analysis: i) A bare perusal of Section 23 shows that according to the LAA 1894, there are six matters that need to be taken into consideration by a Referee Court in determining compensation for land acquired under the LAA 1894. While the market value of the land acquired at the time of possession may be the first matter a Court must take into consideration, it is not the only matter. The Court is bound to consider when a determination has to be made under Section 23 of the LAA 1894. Instead, the other five considerations, from their very text, imply that whenever a Court is to consider the quantum of compensation, it must be duly aware and cognisant of the loss being caused to the landowners due to the Federal or Provincial Government's exercise of eminent domain under the LAA 1894.

ii) Landowners will deprived of their constitutionally-guaranteed proprietary rights under Article 24 of the Constitution of Pakistan, 1973 whenever a government, be it Federal or Provincial, exercises eminent domain under the LAA 1894.

iii) The intention of the legislature behind Section 23 is one where a Court, when determining compensation under the said Section, needs to be considerate and sympathetic to those who have been subjected to eminent domain by the government. Section 23 allows the Court to bring landowners, who have been subjected to eminent domain, back to their positions before the eminent domain was exercised.

iv) Unlike riba/interest that accrues out of a financial obligation between the parties, the word "interest" in Section 34 of the LAA 1894 is not interest stricto sensu. The interest awarded to landowners under Section 34 is compensatory in nature that allows the Court to compensate the landowners for the financial loss landowners would suffer from the date of acquisition till payment of compensation by the acquiring authority.

v) Unlike a financial transaction, where parties are often assumed to be equal in bargaining power and are deemed to be consenting to a transaction, an exercise of eminent domain cannot in any sense be construed as either a consenting transaction between the parties involved (i.e. the State and the landowners) nor can it be assumed by any stretch of imagination that the state and the landowners are equal in terms of bargaining power.
vi) Eminent domain is a unilateral power of the government and no consent from the affected landowners is required under the law before the state can exercise eminent domain under the LAA 1894.

Conclusion: i) A bare perusal of Section 23 shows that according to the LAA 1894, there are six matters that need to be taken into consideration by a Referee Court in determining compensation for land acquired under the LAA 1894.
ii) Landowners will deprived of their constitutionally-guaranteed proprietary rights under Article 24 of the Constitution of Pakistan, 1973 whenever a government exercises eminent domain under the LAA 1894.
iii) The intention of the legislature behind Section 23 is to be considerate and sympathetic to those who have been subjected to eminent domain by the government.
iv) The word "interest" in Section 34 of the LAA 1894 is not interest stricto sensu but it is compensatory in nature.
v) The state and the landowners are not equal in terms of bargaining power.
vi) No consent from the affected landowners is required under the law before the state can exercise eminent domain under the LAA 1894.

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3. Supreme Court of Pakistan
Muhammad Nawaz v. Addl. District & Sessions Judge, etc.
Civil Petition No.2414-L of 2015
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2414_l_2015.pdf

Facts: The petitioner sought leave to appeal against an order of the Lahore High Court, whereby the High Court dismissed his writ petition filed against an order of the revisional court, reversing the order of the trial court, and allowing the application of the respondents for DNA test.

Issues: (i) Whether a DNA test of a person can be ordered in a civil case without his consent?
(ii) Whether an adverse presumption can be drawn against a person who is not a party to civil proceedings and refuses to give consent and present himself for his DNA test?

Analysis: (i) The conducting of the DNA test of a person, without his consent, infringes his fundamental rights to liberty and privacy guaranteed by Articles 9 and 14 of the Constitution of the Islamic Republic of Pakistan...These fundamental rights, are subject to law and can only be interfered with if so regulated by law made by the

legislature. Further, as per the constitutional command of Article 4 of the Constitution, no action detrimental to the liberty, body or reputation of a person can be taken except in accordance with the law, nor can a person be compelled to do that which the law does not require him to do. This being the constitutional mandate, any executive or judicial act taken in respect of the rights to liberty, privacy, body or reputation of a person must be backed by some law. A court order for the DNA test of two persons as a means of identifying their genetic relationships interferes with their right to privacy and liberty. This test can be ordered only either with the consent of the persons concerned or without their consent if permissible under a law. We are aware of certain provisions of criminal law which permit the DNA test of an accused person without his consent, but no civil law has been brought to our notice which allows this test in civil cases without the consent of the person concerned.

(ii) It may be pertinent to mention here that in a civil case, if the person upon whom the onus to prove his genetic relationship with another person lies, does not give consent for his DNA test, and thus withholds such evidence, the court may draw an adverse presumption against the claim of such person and presume that such evidence, if produced, would be unfavourable to him, as per Article 129(g) of the Qanun-e-Shahadat 1984. But the court cannot draw such an adverse presumption if a person, who is not a party to the proceedings before it, does not give his consent and present himself for his DNA test. Further, the presumption under Article 129(g) of the Qanun-e-Shahadat 1984 being permissive, not obligatory, in nature, the court may or may not draw such presumption in the peculiar facts and circumstances of a case.

Conclusion: (i) A DNA test of a person cannot be ordered in a civil case without his consent.
(ii) An adverse presumption cannot be drawn against a person who is not a party to civil proceedings and refuses to give consent and present himself for his DNA test.

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4. **Supreme Court of Pakistan**
Public Interest Law Association of Pakistan registered under the Societies Act, 1860 through authorized person Chaudhry Awais Ahmed v. Province of Punjab through Chief Secretary, Civil Secretariat, Lower Mall, Lahore and others.
Civil Petition No.55 of 2020
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._55_2020.pdf

Facts: This Petition impugns order passed by the High Court wherein the Petitioner, in public interest, challenged the lack of environmental approvals for grant of small-scale mining licences or leases. The issue is the grant of small-scale license or lease for mining minor minerals like sand, gravel and sandstone which are issued without considering the impact on the environment.

Issues: i) What is the basic requirement to start any project related to mines as per the

Punjab Environmental Protection (Review of Initial Environmental Examination and Environmental Impact Assessment) Regulations, 2022 (Regulations)?
ii) Whether relevance of Initial Environmental Examination (IEE) and Environmental Impact Assessment (EIA) reports can be ignored; how it is vital in the projects of mining under Mines and Minerals Department (MDD)?

Analysis: i) The Regulations clearly specify the requirement of an IEE or EIA, which is a fundamental and basic step before a project starts, so as to ensure that an adverse effect on the environment has been considered and addressed. This is because even the exploration and mining of minor minerals has an adverse impact on the environment, which includes deforestation, pollution, production of toxic waste water, loss of habitats and disruption of the ecosystem.
ii) The relevance of the IEE and EIA cannot be ignored. Not only do the IEE and EIA consider the environmental impact of the project but can also include standards and initiatives to improve sustainability of the sector. This can be vital in projects of mining under the MMD. They also prescribe mitigation measures and put in place a monitoring method through an Environment Management Plan (EMP). The EMP provides the basic framework for implementing and managing mitigation and monitoring measures. It identifies the environment issues, the risks and recommends the required action to manage the impact. This is vital because not only does the miner know what its obligations are, it also gives the MMD and the EPA a framework to follow and to ensure its compliance. Hence, all factors considered the IEE and EIA ensure that the project is sustainable and all possible environmental consequences have been identified and addressed adequately.

Conclusion: i) The Regulations clearly specify the requirement of an IEE or EIA, which is a fundamental and basic step before a mines project starts.
ii) The relevance of the IEE and EIA cannot be ignored. This can be vital in projects of mining under the MMD. They also prescribe mitigation measures and put in place a monitoring method through an EMP.

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5. **Supreme Court of Pakistan**
Oil and Gas Regulatory Authority through its Chairperson and another v. Sui Southern Gas Company Limited through its Chairperson and another & etc.
Civil Petitions No.797 of 2021, 1799-L, 171-L & 172-L of 2022 and 1657-L of 2021
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._797_2021.pdf

Facts: All the Civil Petitions have a common Petitioner, the Oil and Gas Regulatory Authority (OGRA) constituted under the Oil and Gas Regulatory Authority Ordinance, 2002 (Ordinance) which is aggrieved by the impugned judgment and orders which find that the Gas Utility Court under the Gas (Theft Control and Recovery) Act, 2016 (2016 Act) has exclusive jurisdiction to prosecute disputes

of consumers.

Issues: i) Whether jurisdiction of the Gas Utility Court is exclusive and no other court or authority can exercise jurisdiction with respect to all matters that are covered by the 2016 Act?
ii) Whether purposes of both of the statutes, the Oil and Gas Regulatory Authority Ordinance, 2000 and the Gas (Theft Control and Recovery) Act, 2016 are different?

Analysis: i) Section 5(5) clarifies that for matters which fall under the jurisdiction of the Gas Utility Court, it enjoys exclusive jurisdiction and no other court or authority can exercise jurisdiction with respect to these matters. Section 5(6)(a), however, allows the Gas Utility Court or consumer to seek remedy before any other forum prescribed under any law which will include OGRA. However, pursuant to this provision OGRA does not enjoy concurrent jurisdiction with the Gas Utility court… In view of the foregoing, it is clear that while OGRA may entertain complaints against a licensee under the Regulations, it does not enjoy concurrent jurisdiction with the Gas Utility Court which has exclusive jurisdiction to adjudicate upon all matters under the 2016 Act. OGRA is, at best, a dispute resolution forum where disputes may be resolved informally, however, the Gas Utility Court is a court with all its inherent powers which has the authority to adjudicate upon and award punishment against offences made out under the 2016 Act.
ii) It is clear that the purposes of both of the statutes under consideration are different. The Ordinance was enacted to provide for the establishment of OGRA and to define its functions and jurisdiction for regulating its activities. Whereas, the 2016 Act was enacted to provide for prosecution of cases of gas theft and other offences relating to gas and to provide a procedure for recovery of amounts due. Therefore, even though the Ordinance gives OGRA the power to resolve dispute of consumers, it is a dispute resolution forum, where the issues provided for in the Regulations can be settled amicably by OGRA between the consumer and the gas company. It is not a court and cannot prosecute the matter like the Gas Utility Court. Consequently, Section 5(6) of the 2016 Act, in our opinion, clarifies that the gas company or a consumer may seek any remedy before any court, tribunal or forum which may otherwise be available to it under the law, however, the Gas Utility Court is the only court which can prosecute cases of gas theft and the offences as prescribed under Sections 14 to 19 of the 2016 Act. Accordingly, if a consumer does not want to prosecute a case before the Gas Utility Court, they may approach OGRA for resolution of their dispute.

Conclusion: i) Jurisdiction of the Gas Utility Court is exclusive and no other court or authority can exercise jurisdiction with respect to all matters that are covered by the 2016 Act.
ii) Purposes of both of the statutes, Ordinance and the 2016 Act are different. Ordinance is an amicable dispute resolution forum whereas, 2016 Act provides

for prosecution of cases of gas theft and other offences relating to gas and to provide a procedure for recovery of amounts due.

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6. **Supreme Court of Pakistan**
Pakistan Electronic Media Regulatory Authority (PEMRA) through its Chairman & another v. M/s ARY Communications Private Limited (ARY Digital) through its Chief Executive Officer & another.
Civil Petition No.3506 of 2020
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3506_2020.pdf

Facts: Through this petition, the petitioner has challenged the decision of Sindh High Court whereby the appeal of the respondent was allowed and the prohibition order against the respondent was set aside.

Issue: Whether Section 27(a) of the Pakistan Electronic Media Regulatory Authority Ordinance 2002 ("PEMRA Ordinance") is an independent and self-governing provision or whether its applicability requires the opinion of the Council of Complaints in terms of Section 26(2) of the PEMRA Ordinance read with the Pakistan Electronic Media Regulatory Authority (Councils of Complaints) Rules 2010 ("Councils of Complaints Rules")?

Analysis: It has also been argued on behalf of PEMRA that the Councils of Complaints have no power to receive and review complaints against any "advertisement" under Section 26(2), while PEMRA has such power under Section 27(a); therefore, the power of PEMRA under Section 27(a) is independent of the provisions of Section 26. It is true that the word "advertisement" is not mentioned in subsection (2) of Section 26 but it is found mentioned in subsection (5) thereof. The omission of this word in subsection (2) of Section 26 appears to be an accidental one, as it does not fit within the overall intent of the legislature manifested from reading the provisions of Section 26 as a whole. Needless to say that the ultimate object of the process of interpretation of a statute is to find out what the legislature must have intended and then to give effect to that intent of the legislature, and in order to give effect to the manifest intent of the legislature, the courts can supply the inadvertent omission of the draftsman by reading the necessary words in the statute. Subsection (5) of Section 26 clearly empowers the Councils of Complaints to make a recommendation to PEMRA for the action of censure or fine against a licensee for violation of the codes not only of programmes content but also of advertisements. The provisions of subsection (5) of Section 26 thus make the intent of the legislature abundantly clear that it intended to confer the power on the Councils of Complaints to receive and review complaints against any aspects of programmes or advertisements, which shall be so read in subsection (2) of Section 26, in order to give effect to that manifest intent of the legislature.

Conclusion: Section 27(a) of the PEMRA Ordinance is not an independent and self-governing provision; it rather requires for its applicability the opinion of a Council of Complaints regarding the objectionable aspect of a programme or advertisement in terms of Section 26(2) of the PEMRA Ordinance read with the Councils of Complaints Rules.

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7. **Supreme Court of Pakistan**
Noor Kamal and Asad Kamal @ Syed Kamal v. The State and another.
Criminal Petition No. 1720 of 2022
Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1720_2022.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have assailed the judgment passed by the learned Single Judge of the Peshawar High Court, with a prayer to grant post-arrest bail on statutory ground in the interest of safe administration of criminal justice.

Issues: i) What is continuous period of detention on which an accused can claim post-arrest bail on statutory ground in cases of non-bailable offences, which are not punishable with death?
ii) Whether an accused is entitled for the concession of post arrest bail on rule of consistency alone?

Analysis: i) A plain language of proviso 3 to sub-Section (1) of Section 497 Cr.P.C. clearly reveals that in cases of non-bailable offences, which are not punishable with death where the accused has been detained for a continuous period exceeding one year and it is found that the delay in the trial has not been occasioned due to any act or omission of the accused, the Court shall direct that the accused be released on bail. This Court has time and again held that liberty of a person is a precious right, which cannot be taken away without exceptional foundations.
ii) The co-accused of the petitioners namely Usman, who was ascribed the similar role, has been granted post-arrest bail by this Court, therefore, the petitioners are entitled for the concession of post arrest bail on this score alone.

Conclusion: i) An accused can claim post-arrest bail on statutory ground in cases of non-bailable offences, which are not punishable with death on detention for a continuous period exceeding one year.
ii) An accused is entitled for the concession of post arrest bail on rule of consistency alone.

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8. **Supreme Court of Pakistan**
WAPDA through Chairman and others v. Alam Sher and others.
Civil Appeal No. 2619 of 2016
Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._2619_2016.pdf

Facts: The appellants filed appeal under Section 54 of the Land Acquisition Act, 1894, thereby assailing the judgment passed by the Peshawar High Court, whereby the Regular First Appeal filed by the appellants was dismissed and the order of the Judge Land Acquisition was upheld wherein the Court enhanced the compensation amount.

Issues: (i) Whether under section 23 the Land Acquisition Act 1894, a landowner is entitled to compensation only to the extent of the market value of the acquired property?
(ii) Whether oral evidence can be considered while determining the compensation amount for an acquired property?
(iii) Whether the Supreme Court in its appellate jurisdiction can determine any ground or question of fact not pleaded or raised by the parties at any forum below?

Analysis: (i) Mode of determining the compensation of acquired land is provided in Section 23 of the Land Acquisition Act, 1894, which depicts that the landowner is entitled to compensation and not just market value, as such, any loss or injury occasioned by its severing from other property of the landowner, by change of residence or place of business and loss of profits are also relevant factors.
(ii) While conducting said exercise, oral evidence, if found credible and reliable can also be taken into consideration. The requirement of Article 71 of the Qanun-e-Shahadat Order, 1984, squarely requires that it should be produced directly if the same is in oral form.
(iii) This is settled law that Supreme Court in its appellate jurisdiction would generally not determine any ground or question of fact that had not been pleaded or raised by the parties at any stage before the Referee Court or the High Court and has been for the first time raised in appeal before Supreme Court.

Conclusion: (i) Under Section 23 of the Land Acquisition Act, 1894, the landowner is entitled to compensation not just based on market value of the acquired property but any loss or injury occasioned by its severing from other property of the landowner, by change of residence or place of business and loss of profits are also relevant factors.
(ii) Oral evidence, if found credible can be considered while determining the compensation amount for an acquired property.
(iii) The Supreme Court in its appellate jurisdiction cannot determine any ground or question of fact not pleaded or raised by the parties at any forum below.

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9. **Supreme Court of Pakistan**
Pirzada Noor-ul-Basar v. Mst. Pakistan Bibi and others.
Civil Appeal No. 23-P of 2017
Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._23_p_2017.pdf

Facts: Through this appeal, the appellant has assailed the judgment passed by the learned Single Judge of the Peshawar High Court, whereby the Civil Revision filed by the respondent No. 1 was allowed, the judgments and decrees of the learned two courts were set aside and the suit of the respondent No.1/plaintiff was decreed.

Issues: i) Whether the Supreme Court in its appellate jurisdiction can determine any ground or question of fact that had not been pleaded or raised by the parties at early stage before the lower court & High Court and has been for the first time raised in appeal before it?
ii) What is the period of limitation to file suit regarding the matter related to wrong entries in the revenue record and from which date it is to be counted?

Analysis: i) This is settled law that this Court in its appellate jurisdiction would generally not determine any ground or question of fact that had not been pleaded or raised by the parties at early stage before the lower court & High Court and has been for the first time raised in appeal before this Court. The appellant has no right to raise an absolutely new plea before this Court and seek a decision on it nor could such plea be allowed to be raised as a matter of course or right on the pretext of doing complete justice.
ii) The respondent never said that she did not receive the dower rather it was her claim that she is enjoying the proceeds/fruit of the land. Therefore, the matter in-fact related to wrong entries in the revenue record and the same in no way can be termed as a matter relating to dower. The learned High Court by placing reliance on the judgment of this Court reported as Abdul Sattar Khan Vs. Rafiq Khan (2000 SCMR 1574) and Articles 120 and 144 of the Qanun-e-Shahdat Order, 1984 has rightly held that the period of six years is to be counted from the date when the right to sue accrued.

Conclusion: i) The Supreme Court in its appellate jurisdiction cannot determine any ground or question of fact that had not been pleaded or raised by the parties at early stage before the lower court & High Court and has been for the first time raised in appeal before it.
ii) The period of limitation to file suit regarding the matter related to wrong entries in the revenue record is six years and it is to be counted from the date when the right to sue accrued.

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10. **Supreme Court of Pakistan**
Ahtisham Ali v. The State
Criminal Petition No.13-K of 2023
Mr. Justice Munib Akhtar, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._13_k_2023.pdf

Facts: This Criminal Petition for leave to appeal is brought to entreat pre-arrest bail in FIR registered under Sections 324, 380, 427, 337-A(i), 337-F(i) and 34 of the Pakistan Penal Code, 1860.

Issues: i) What are the essential requirements to constitute an offence punishable u/s 34 PPC?
ii) What are the governing principles of a pre-arrest bail?

Analysis: i) So far as the applicability of Section 34 of PPC is concerned, it lays down the principle of constructive liability whereby if several persons would unite with a common purpose to do any criminal offence, all those who assist in the completion of their object would be equally guilty. The foundation for constructive liability is the common intention in meeting accused to do the criminal act and the doing of such act in furtherance of common intention to commit the offence. In order to constitute an offence under Section 34 PPC, it is not required that a person should necessarily perform any act by his own hand, rather the common intention presupposes prior concert and requires a prearranged plan. If several persons had the common intention of doing a particular criminal act and if, in furtherance of their common intention, all of them joined together and aided or abetted each other in the commission of an act, then one out of them could not actually with his own hand do the act, but if he helps by his presence or by other act in the commission of an act, he would be held to have himself done that act within the meaning of Section 34 PPC.
ii) It is a well settled exposition of law that the grant of pre-arrest bail is an extraordinary relief which may be granted in extraordinary situations to protect the liberty of innocent persons in cases lodged with mala fide intention to harass the person with ulterior motives. By all means, while applying for pre-arrest bail, the petitioner has to satisfy the Court with regard to the basic conditions quantified under Section 497 of the Code of Criminal Procedure, 1898 Cr.P.C vis-à-vis the existence of reasonable grounds to confide that he is not guilty of the offence alleged against him and the case is one of further inquiry. In the case of Rana Abdul Khaliq Vs The State and others (2019 SCMR 1129), this Court held that grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; it is a protection to the innocent being hounded on trumped up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that the intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation. Ever since the

advent of Hidayat Ullah Khan's case (PLD 1949 Lahore 21), the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of mala fide, ulterior motive or abuse of process of law, situations wherein Court must not hesitate to rescue innocent citizens; these considerations are conspicuously missing in the present case. While in the case of Rana Muhammad Arshad Vs Muhammad Rafique and another (PLD 2009 SC 427), this Court has discussed the framework and guidelines for granting bail before arrest under Section 498, Cr.P.C. by the High Courts and Courts of Session. It was held that the exercise of this power should be confined to cases in which not only a good prima facie ground is made out for the grant of bail in respect of the offence alleged, but also it should be shown that if the petitioner were to be arrested and refused bail, such an order would, in all probability, be made not from motives of furthering the ends of justice in relation to the case, but from some ulterior motive, and with the object of injuring the petitioner, or that the petitioner would in such an eventuality suffer irreparable harm.

Conclusion: i) To constitute an offence under Section 34 PPC, it is not required that a person should necessarily perform any act by his own hand; rather the common intention presupposes prior concert and requires a prearranged plan.

ii) Grant of pre-arrest bail is an extraordinary relief which essentially requires considerations of mala fide, ulterior motive or abuse of process of law.

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11. **Supreme Court of Pakistan**
Muhammad Raqeeb v. Government of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar & others.
Civil Appeal No.1414 of 2021
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1414_2021.pdf

Facts: This Civil Appeal of leave of the Court is directed against the judgment passed by the Peshawar High Court whereby the writ petition filed by the appellant to receive the pensionary benefits in second round of litigation before the same Court was dismissed.

Issues: i) Whether the contractual employees performing their duties on project post could claim regularization in terms of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009?

ii) What is the doctrine of estoppel under Article 114 of the Qanun-e-Shahadat Order, 1984?

iii) What is the doctrine of res judicata explicated under Section 11 of the Code of Civil Procedure, 1908?

Analysis: i) Section 2(b) of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 refers to the definition of “employee” as employment status

of an employee appointed by the Government on ad hoc or contract basis or second shift/night shift, but does not include the employees for project posts, or those appointed on work charge basis, or those who are paid out of contingencies. According to Section 3 of the 2009 Act, only those employees who were appointed on contract or ad hoc basis and were holding the post on December 31, 2008 or till the commencement of the 2009 Act were deemed to have been validly appointed on regular basis. While reading this provision in conjunction with the definition of "employee" provided under the 2009 Act it is lucidly clear that the persons performing their contractual duties for project post or on work charge basis or who are paid out of contingencies were excluded from the definition of employee. Hence by all means the contractual employees performing their duties on project post could not claim regularization in terms of the aforesaid Act.

ii) Article 114 of the Qanun-e-Shahadat Order, 1984 defines the doctrine of estoppel under which, when a person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.

iii) The doctrine of finality is primarily focused on a long-lasting and time honored philosophy enshrined in the legal maxim "Interest reipublicae ut sit finis litium" which recapitulates that "in the interest of the society as a whole, the litigation must come to an end" or "it is in the interest of the State that there should be an end to litigation" and latin maxim "Re judicata pro veritate occipitur" which expounds that a judicial decision must be accepted as correct. Once a judgment attains finality between the parties it cannot be reopened unless some fraud, mistake or lack of jurisdiction is pleaded and established. Finality of judgments culminates the judicial process, proscribing and barring successive appeals or challenging or questioning the judicial decision keeping in view the rigors of the renowned doctrine of res judicata explicated under Section 11 of the Code of Civil Procedure, 1908. When the controversy attains finality under the doctrine of past and closed transaction, the controversy cannot be reopened by the Court in the second round of litigation which on the face of it is an abuse of process of the Court.

Conclusion: i) The contractual employees performing their duties on project post could not claim regularization in terms of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009.

ii) Under Article 114 of the Qanun-e-Shahadat Order, 1984 which defines the doctrine of estoppel, when a person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.

iii) Under the doctrine of res judicata explicated under Section 11 of the Code of Civil Procedure, 1908, when the controversy attains finality by the Court, it

cannot be reopened in the second round of litigation unless some fraud, mistake or lack of jurisdiction is pleaded and established.

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12. **Supreme Court of Pakistan**
Ansar etc. v. The State etc.
Jail Petition No. 405 of 2021 and Criminal Petition No. 946 of 2021
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/j.p._405_2021.pdf

Facts: Petitioners along with co accused were tried by the learned Additional Sessions Judge, pursuant to a case FIR under Sections 302/324/396 PPC for committing dacoity cum murder and for attempting to take life of one victim. The learned Trial Court while acquitting the co-accused, convicted the petitioners. In appeal, the learned High Court maintained the convictions and sentences recorded by the learned Trial Court.

Issues: i) Whether minor discrepancy in evidence will make the prosecution case doubtful?
ii) When a witness remains consistent on all material particulars and there is nothing in evidence to suggest that he deposed falsely; whether the non-holding of identification parade would be fatal for the prosecution case?
iii) What is the difference between the 'robbery' and the 'dacoity'?
iv) What does the word 'conjointly' used in Sections 391/396 PPC indicates?

Analysis: i) The contradiction in the statement of a witness may be fatal for the prosecution case but minor discrepancy in evidence will not make the prosecution case doubtful. Where discrepancies are of minor character and do not go to the root of the prosecution story and do not shake the salient features of the prosecution version, they need not be given much importance.
ii) It is settled law that holding of identification parade is merely a corroborative piece of evidence. If a witness identifies the accused in court and his statement inspires confidence; he remains consistent on all material particulars and there is nothing in evidence to suggest that he is deposing falsely, then even the non-holding of identification parade would not be fatal for the prosecution case.
iii) Bare reading of Section 391 & 396 PPC makes it manifestly clear that the 'dacoity' can be said to be an exaggerated version of robbery. If five or more persons conjointly commit or attempt to commit robbery it can be said to be committing the 'dacoity'. Therefore, the only difference between the 'robbery' and the 'dacoity' would be the number of persons involved in conjointly committing or attempt to commit a 'robbery'. The punishment for 'dacoity' and 'robbery' would be the same except that in the case of 'dacoity' the punishment of imprisonment for life can be awarded. However, in the case of 'dacoity with murder' the punishment of death has also been provided in the statute.
iv) An immediate feature of Sections 391 & 396 PPC which strikes at first reading is that the word "conjointly" has been used in these provisions of law, which is

not used anywhere in Pakistan Penal Code except in the afore-said provisions. It appears that this word has been deliberately preferred over the word 'jointly'. 'Conjointly' indicates jointness of action and understanding. Everyone acts in aid of other. 'Conjointly' means to act in joint manner, together, unitedly by more than one person. Thus the use of word 'conjointly' in Sections 391/396 PPC indicates that five or more robbers act with knowledge and consent and in aid of one another or pursuant to an agreement or understanding, i.e., unitedly. The joint reading of Sections 391 and 396 of PPC makes it abundantly clear that for the offence of dacoity, the essential pre-requisite is the joint participation of five or more persons in the commission of the offence. If in the course thereof any one of them commits murder, all members of the assembly would be guilty of dacoity with murder and would be liable to be punished as enjoin thereby.

Conclusion: i) Minor discrepancy in evidence will not make the prosecution case doubtful.
ii) When a witness remains consistent on all material particulars and there is nothing in evidence to suggest that he deposed falsely; the non-holding of identification parade would not be fatal for the prosecution case.
iii) The only difference between the 'robbery' and the 'dacoity' is the number of persons involved in conjointly committing or attempt to commit a 'robbery'.
iv) The word 'conjointly' used in Sections 391/396 PPC indicates that five or more robbers act with knowledge and consent and in aid of one another or pursuant to an agreement or understanding, i.e., unitedly. If in the course thereof any one of them commits murder, all members of the assembly would be guilty of dacoity with murder and would be liable to be punished as enjoin thereby.

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13. **Supreme Court of Pakistan**
Khan Afsar v. Mst. Qudrat Jan widow etc.
Civil Petitions No.3573 and 3574 of 2020
Mr. Justice Yahya Afridi, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3573_2020.pdf

Facts: The petitioner, in both cases, has challenged the concurrent findings of all three courts below, which had maintained the findings of all four rungs of adjudicatory hierarchy provided under revenue law.

Issues: When cause of action for a mortgagor to redeem the mortgage and recover the possession of the mortgaged property would commence?

Analysis: The cause of action for a mortgagor to redeem the mortgage and recover the possession of the mortgaged property would commence from the point when the mortgagor can, under the terms of the mortgage, redeem the mortgage property or recover the possession thereof. Thus, the crucial determining factor for commencement of the period of limitation would depend on the terms of the mortgage agreement entered into between the parties. When the term of the mortgage is agreed and fixed the cause of action of the /mortgagors to redeem the mortgage of the disputed property would accrue from the date of the expiry of the

fixed term and thereafter the limitation period of sixty years would commence. Where, under the terms of the agreement, the mortgage is for a fixed period but without a specific date of expiry of the term. In such a case, the right of redemption can only arise on the expiration of a specified period and not before and the limitation would commence from the expiry of the period so fixed. Where, under the terms of the agreement, neither any specific date nor any term is fixed. In such a case, limitation would run from the date of the agreement of mortgage.

Conclusion: When the term of the mortgage is agreed and fixed, the cause of action of the mortgagor to redeem the mortgage of the disputed property would accrue from the date of the expiry of the fixed term. Where the mortgage is for a fixed period but without a specific date of expiry of the term, the right of redemption can only arise on the expiration of a specified period and not before. Where, under the terms of the agreement, neither any specific date nor any term is fixed; limitation would run from the date of the agreement of mortgage.

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14. **Lahore High Court**
Sajid alias Saji v. The State, etc.
Crl. Appeal No.241575-J/2018
Mr. Justice Muhammad Ameer Bhatti, HCJ
https://sys.lhc.gov.pk/appjudgments/2023LHC2048.pdf

Facts: The learned ASJ awarded imprisonment for life to the petitioner u/s 302 read with Section 34, P.P.C. in a private complaint, which is under challenge through the accompanying appeal. The petitioner through the instant petition, has sought suspension of his sentence and admitting him to bail till disposal of the main appeal, on statutory ground of delay in decision of appeal pending for a period of more than four and half years.

Issue: Whether a convict is entitled to bail on completion of statutory period?

Analysis: The appellant's appeal against conviction is pending in the Court for the last more than four years, without any fault on his part, whereas proviso (c) of Section 426(1A), Cr.P.C. stipulates release of those convicts whose appeals could not be heard according to the parameter given in it declaring it statutory right of the convict to claim his bail if he had already served such period. It is held that during pendency of his appeal, the applicant has earned a statutory right to be released on bail in terms of proviso (c) of Section 426(1A), Cr.P.C.

Conclusion: Proviso (c) of Section 426(1A), Cr.P.C. stipulates release of those convicts whose appeals could not be heard according to the parameter given in it declaring it statutory right of the convict to claim his bail if he had already served such period.

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15. **Lahore High Court**
Chairman National Highway Authority and another v. Abdul Hameed etc.
Case Diary No.9494 of 2023
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC1413.pdf

Facts: Office has raised objection against maintainability of the petition filed under Land Acquisition Act, 1894 (the Act, 1894) on the ground that the petitioners should avail the proper remedy against the impugned order.

Issues: i) Whether the procedure provided under CPC is applicable to proceedings before the Referee Court?
ii) When a party opts to file proceedings under any law, whether further remedy is also governed under the same law or not?

Analysis: i) In ordinary course, an order dismissing application filed under Order IX rule 13 CPC is appealable in terms of Order XLIII CPC. As far as proceedings on a Reference, filed under section 18 of the Land Acquisition Act, 1894, are concerned, the same are to be governed under CPC in terms of section 53 of the Act, 1894. From the above, it is crystal clear that the procedure provided under CPC is applicable to proceedings before the Referee Court until and unless it has specifically been ousted.
ii) It is well entrenched by now that when a party opts to file proceedings under any law, further remedy is governed under the same law. Insofar as the case in hand is concerned, when the petitioner himself filed application under Order IX rule 13 CPC for setting aside of ex-parte proceedings and decree, further remedy is to be governed under CPC and not the Act, 1894, especially when the appeal provided under the Act, 1894, is inapplicable in the present case.

Conclusion: i) The procedure provided under CPC is applicable to proceedings before the Referee Court until and unless it has specifically been ousted.
ii) When a party opts to file proceedings under any law, then further remedy is also governed under the same law.

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16. **Lahore High Court**
The State through Prosecutor General, Punjab v. Judge, Anti-Terrorism Court No.1, Lahore.
Writ Petition No.29571/2013
Mr. Justice Ali Baqar Najafi, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2022LHC9108.pdf

Facts: Through this petition under Article 199 of the Constitution, the petitioner calls in question the validity of order of learned Judge, Anti-Terrorism Court whereby Public Prosecutor's application under Section 10(3) (e)(iii) & (f) of the Punjab Criminal Prosecution Service Act, 2006 read with Section 494 Cr.P.C. for withdrawal of prosecution of Case FIR in respect of offences u/s 353,186,427,336,148 & 149 PPC, 16 MPO and Section 7 of Anti-Terrorism Act,

1997 was turned down.

Issue: Whether u/s 10(3) (e)(iii) & (f) of the Punjab Criminal Prosecution Service Act, 2006 and Section 494 Cr.P.C., a public prosecutor is vested with an authority to withdraw prosecution of any person either generally or in respect of any one or more offences?

Analysis: From the bare reading of the Section 10(3) (e)(iii) & (f) of the Punjab Criminal Prosecution Service Act, 2006 and Section 494 Cr.P.C., it is manifestly clear that, a public prosecutor is vested with an authority to withdraw prosecution of any person either generally or in respect of any one or more offences but the same is subject to the "consent" of the Court. The consent of the Court implies its judicial discretion, which undoubtedly can be exercised by applying its judicial mind. While exercising its discretion, it is the bounden duty of the court to ensure that normal course of justice is not deflected for unseen reasons and there should be no indication of throttling the prosecution. Objective criteria relatable to public policy or public peace and administration of justice is squarely missing in the instant case. The ground that 9/10 co-accused have already been acquitted by the trial court is directly related to the detailed appreciation of the evidence, which cannot be undertaken for the purpose of deciding whether "consent" to the withdrawal of application should be accorded or not. No doubt, the legislature has empowered the Public Prosecutor to withdraw prosecution of any person either generally or in respect of any one or more offences prior to the pronouncement of judgment but at the same time a clog has been placed that the same shall be subject to the "consent of the Court". In this way a sacred duty has been bestowed upon the court to see that the permission is not sought for on the grounds extraneous to the interest of justice and the offences which are against the State go unpunished merely for the reasons that the Government has decided not to prosecute such offenders under the law. If the accused is of the view that his case is at par to that 9/10 acquitted co-accused then the same could better be adjudged during judicial process of trial and not in isolation and secrecy of government department.

Conclusion: From the bare reading of the Section 10(3) (e)(iii) & (f) of the Punjab Criminal Prosecution Service Act, 2006 and Section 494 Cr.P.C., it is manifestly clear that, a public prosecutor is vested with an authority to withdraw prosecution of any person either generally or in respect of any one or more offences but the same is subject to the "consent" of the Court.

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17. **Lahore High Court**
Amer Saleem v. Nadeem Akhtar Mirza and another.
R.F.A. No.23090 of 2017
Mr. Justice Shahid Bilal Hassan, Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC1419.pdf

Facts: This single judgment shall decide the captioned appeal as well as connected appeal having been filed against one and the same impugned judgment and decree wherein the learned trial Court has dismissed both the suits.

Issues: i) Whether it is necessary to produce attesting witnesses where the execution of a document is admitted by the executant himself?
ii) What is the mandate of Rule 6 of the Order XII, Code of Civil Procedure, 1908?
iii) Whether the court can compare the signatures of any party with the admitted ones?

Analysis: i) The simple reading of Article 81 of the Qanun-e-Shahadat Order, 1984 divulges that where the execution of a document is admitted by the executant himself, the examination of attesting witnesses is not necessary. It is a settled principle of law that admitted facts need not to be proved, so production of two attesting witnesses where the execution of a document is admitted is not necessary.
ii) It is the mandate of Rule 6 of the Order XII, Code of Civil Procedure, 1908 that where unequivocal and categorical admission as well as no objection on decreeing suit has been pressed before court then the Court may upon such application make such order, or give such judgment as the Court may think just.
iii) The court can compare the signatures of any party with the admitted ones in exercise of jurisdiction under Article 84 of the Qanun-e-Shahadat Order, 1984.

Conclusion: i) Where the execution of a document is admitted by the executant himself, the examination of attesting witnesses is not necessary.
ii) It is the mandate of Rule 6 of the Order XII, Code of Civil Procedure, 1908 that where admission as well as no objection on decreeing suit has been pressed then the Court may upon such application make such order, or give such judgment as the Court may think just.
iii) The court can compare the signatures of any party with the admitted ones.

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18. **Lahore High Court**
Muhammad Farooq Azam (deceased) through L.Rs and others v. Mst. Hooran Bibi.
R.S.A.No.65 of 2014
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC1428.pdf

Facts: This regular second appeal has been filed against the judgment and decree passed by learned appellate Court which has accepted the appeal and consequently dismissed suit of the appellants.

Issues: i) Whether an illiterate, rustic and village household lady is also entitled to the same protection which is available to the Parda observing lady under the law?
ii) What is scope of appeal under Section 100 of the Code of Civil Procedure 1908?

Analysis: i) An old and illiterate lady is entitled to the same protection which is available to the Parda observing lady under the law.
ii) The scope of second appeal is restricted and limited to the grounds mentioned in Section 100 of the Code of Civil Procedure 1908 as Section 101 of the Code of Civil Procedure 1908 expressly mandates that no second appeal shall lie except on the grounds mentioned in Section 100 of the Code of Civil Procedure 1908.

Conclusion: i) An illiterate, rustic and village household lady is also entitled to the same protection which is available to the Parda observing lady under the law.
ii) Second appeal shall lie only on the grounds mentioned in Section 100 of the Code of Civil Procedure 1908.

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19. **Lahore High Court**
Sheikh Muhammad Aslam v. Muhammad Ali Nawaz, etc.
R.F.A. No. 1228 of 2015
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2059.pdf

Facts: The appellant instituted a suit for recovery of money on the basis of cheque under Order XXXVII, Rules 1 & 2 of CPC against the respondents. The learned trial Court dismissed the suit; hence, the instant regular first appeal.

Issues: i) Who is liable to pay the disputed amount of a negotiable instrument?
ii) Whether evidence beyond pleadings is admissible?
iii) What would be effect of non-production of best witness in circumstances of case?

Analysis: i) When the sections 29 and 29-A of the Negotiable Instruments Act, 1881 are read together and considered, it can safely be inferred that a person (in this case legal heirs) is liable only to pay the disputed amount of a negotiable instrument when he signs the same and not otherwise.
ii) It is a settled principle of law that a party cannot go beyond the pleadings and if anything is produced or brought on record beyond pleadings the same cannot be considered being inadmissible.
iii) In case of non-production of best witness in circumstances of the case, the adverse presumption as per Article 129(g), Qanun-e-Shahadat Order, 1984 arises against the appellant that had he been produced in the witness box, he would not have supported the stance of the appellant.

Conclusion: i) A person is liable only to pay the disputed amount of a negotiable instrument when he signs the same and not otherwise.
ii) Evidence beyond pleadings cannot be considered being inadmissible.
iii) In case of non-production of best witness in circumstances of the case, the adverse presumption as per Article 129(g), Qanun-e-Shahadat Order, 1984 arises against the appellant that had he been produced in the witness box, he would not

have supported the stance of the appellant.

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20. **Lahore High Court**
Muhammad Asif Nawaz, etc v. Muhammad Nawaz, etc.
Civil Revision No.22422 of 2023
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2065.pdf

Facts: The petitioners instituted a suit for declaration against the respondents with the averments that the petitioners purchased the disputed house and their father/respondent No.1 was a benamidar. The respondent No.1 transferred the suit house in the name of respondents No.2 and 3 vide registered sale deed. The petitioners prayed for declaratory decree with further prayer to cancel the registered sale deed. The learned trial Court dismissed suit of the petitioners. The petitioners being aggrieved preferred an appeal but the same was dismissed. Hence the instant revision petition has been filed.

Issues: i) What is the criteria for determining the question, whether a transaction is a Benami transaction or not?
ii) Whether initial burden of proof is on the party who alleges that an ostensible owner is a Benamidar?
iii) Whether concurrent findings on record can be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908?

Analysis: i) Criteria for determining the question, whether a transaction is a Benami transaction or not, inter alia, the following factors are to be taken into consideration as elaborated in Muhammad Sajjad Hussain v. Muhammad Anwar Hussain (1991 SCMR 703):- (i) Source of consideration; (ii) From whose custody the original title deed and other documents came in evidence; (iii) Who is in possession of the suit property; and (iv) Motive for the Benami transaction.
ii) The initial burden of proof is on the party who alleges that an ostensible owner is a Benamidar.
iii) As such, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908.

Conclusion: i) Criteria for determining the question, whether a transaction is a Benami transaction or not, inter alia, the following factors are to be taken into consideration:- (i) Source of consideration; (ii) From whose custody the original title deed and other documents came in evidence; (iii) Who is in possession of the suit property; and (iv) Motive for the Benami transaction.
ii) The initial burden of proof is on the party who alleges that an ostensible owner is a Benamidar.
iii) The concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908.

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21. **Lahore High Court**
Abdul Karim v. Mst. Ruqqia Begum (deceased) through L.Rs. and others.
Civil Revision No.77 of 2010
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2050.pdf

Facts: The respondents / plaintiffs challenged the gifts in favour of the petitioner by instituting a suit for declaration and permanent injunction, with the allegations that the power of attorney was fraudulent and deceased was suffering from paralysis and was unable to appoint his attorney. The petitioner contested the suit, learned trial Court dismissed suit of the respondents who being aggrieved preferred an appeal and the learned appellate Court accepted the appeal; hence, the instant revision petition.

Issues: i) Whether it is necessary that general power of attorney must contain a clear separate clause in order to achieve certain object?
ii) Whether the statement of scribe can be equated with the statement of marginal witness?
iii) Whether mutation is title deed and who is to prove the same?
iv) The findings of which court would be given preference in case of inconsistency in findings of the courts below?

Analysis: i) In order to achieve the object it must contain a clear separate clause devoted to the said object, reliance is placed on Fida Muhammad v. Pir Muhammad Khan (deceased) through Legal Heirs and others (PLD 1985 Supreme Court 341). When the position is no such separate clause has been mentioned in the purported general power of attorney, the said power of attorney cannot be utilized for effecting a gift by the attorney without intentions and directions of the principal to gift the property, which intentions and directions must be proved on record. Reliance in this regard is placed on Mst Naila Kausar and another v. Sardar Muhammad Bakhsh and others (2016 SCMR 1781).
ii) The statement of scribe cannot be equated with the statement of marginal witness. In this regard reliance is placed on Hafiz Tassaduq Hussain Vs. Muhammad Din through Legal Heirs and others (PLD 2011 Supreme Court 241), Sajjad Ahmad Khan v. Muhammad Saleem Alvi and others (2021 SCMR 415) and Sheikh Muhammad Muneer v. Mst. Feezan (PLD 2021 Supreme Court 538) wherein it has been held:- '14. As regards the scribe he was not shown or described as a witness in the said agreement, therefore, he could not be categorized as an attesting witness.'
iii) Mutation per se is not a deed of title and is merely indicative of some previous oral transaction between the parties; so whenever any mutation is challenged burden squarely lies upon the beneficiary of such mutation to prove not only the mutation but also the original transaction, which he was required to fall back upon.

iv) It is a settled principle, by now, that in case of inconsistency between the findings of the learned trial Court and the learned Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary. Reliance is placed on Amjad Ikram v. Mst. Asiya Kausar and 2 others (2015 SCMR 1), Madan Gopal and 4 others v. Maran Bepari and 3 others (PLD 1969 SC 617) and Muhammad Nawaz through LRs. v. Haji Muhammad Baran Khan through LRs. and others (2013 SCMR 1300).

Conclusion: i) It is necessary that general power of attorney must contain a clear separate clause in order to achieve certain object.
ii) The statement of scribe cannot be equated with the statement of marginal witness.
iii) Mutation is not a deed of title and the burden to prove lies upon the beneficiary of such mutation.
iv) In case of inconsistency between the findings; the findings of learned Appellate Court must be given preference in the absence of any cogent reason to the contrary.

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22. **Lahore High Court**
The State v. Asjad Mehmood.
Murder Reference No.100 of 2019
Asjad Mehmood v. The State.
Crl. Appeal No.44525-J of 2019
Mr. Justice Aalia Neelum, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC1385.pdf

Facts: The appellant has assailed his conviction and sentence recorded by the learned Addl. Sessions Judge, in a State case F.I.R , an offence under Section 302 PPC, registered at the police station, whereby the learned trial court convicted the appellant , under Section 302 (b) PPC as Ta'zir and sentenced to death with the direction to pay Rs.3,00,000/- as compensation to the legal heirs of the deceased under Section 544-A of Cr.P.C, which would be recoverable as arrears of land revenue and in case of default in payment thereof, he would further undergo 06-months S.I. Feeling aggrieved by the judgment of the learned trial court, the appellant has assailed his conviction and sentence by filing an appeal. The learned trial court also referred Murder Reference to confirm the death sentence awarded to the appellant, as both the matters arising from the same judgment of the learned trial court are being disposed of through this consolidated judgment.

Issues: i) Whether conviction can be based on absconsion alone especially when ocular evidence has been disbelieved?
ii) Whether delay in lodging the FIR , is fatal to the prosecution's case?
iii) What would be the effect if the prosecution withholds its material witness?

Analysis: i) The appellant was indeed absconding, but in the present case, the substantive piece of evidence in the shape of an ocular account has been disbelieved; therefore, no conviction can be based on absconsion alone.

ii) Delay in lodging the first information report often results in consultation and deliberation, which is a creature of an afterthought. The prosecution failed to explain the delay in reporting the incident and the delay in conducting a post-mortem examination of the dead body of deceased. Hence, these circumstances raise considerable doubt regarding the veracity of the case and suggests delay in reporting the incident in lodging the first information report which is fatal to the prosecution's case...

iii) Thus, it was established from the evidence of PW-1 and PW-2 that PW informed the police about the incident and said witness was given up being un-necessary, therefore, an adverse inference is to be drawn within the meaning of Article 129 (g) of Qanun-e-Shahadat Order, 1984 that had the witness PW, been appeared in witness box, then his testimony would have been un-favourable to the prosecution...

Conclusion: i) When ocular evidence is disbelieved, no conviction can be based on absconsion alone.

ii) Yes, delay in lodging the FIR is fatal to the prosecution case and same results consultation and deliberation.

iii) An adverse inference is to be drawn within the meaning of Article 129 (g) of Qanun-e-Shahadat Order, 1984, if material witness was given up being un-necessary.

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23. **Lahore High Court**
The State v. Muhammad Nasir @ Bhola.
Murder Reference No. 104 of 2019
Muhammad Nasir @ Bhola v. The State.
Crl. Appeal No. 44570 of 2019
Mrs. Justice Aalia Neelum, Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC2072.pdf

Facts: The appellant was involved in an offence under Section 302 P.P.C. The trial court sentenced him to death for committing Qatl-e-Amd with the direction to pay compensation to the legal heirs of the deceased and in case of default thereof, to further undergo 06-months imprisonment. Feeling aggrieved by the judgment of the learned trial court, the appellant has assailed his conviction by filing the instant appeal. The learned trial court also referred to confirm the death sentence awarded to the appellant.

Issues: i) What will be the effect on the case if there is unexplained delay in lodging of FIR?

ii) Whether the evidence of chance witnesses can be accepted and what circumstances are to be kept in view to accept the ocular evidence of chance witnesses?

iii) Whether motive is a double-edged sword that cuts both sides and it can be a ground to hold the accused guilty?

Analysis: i) The evidential value of the First Information Report will be reduced if it is made after the unexplained delay, particularly when it creates a suspicion that the informant had sufficient opportunity to concoct a story and falsely implicate the accused.
ii) The evidence of chance witnesses can be accepted. The statements of such witnesses adequately explain the presence of witnesses, and such evidence stands the test of caution and scrutiny. It can only be relied upon if the proof has a ring of truth and is cogent, credible, and trustworthy. Similarly, the conduct of the chance witnesses is also a relevant factor while appreciating his evidence. The occasion for the presence at the time of occurrence, the opportunity to witness the crime, the normal conduct of the witness to the victim, and his predisposition towards the accused, are some of the circumstances to be kept in view to weigh and accept the ocular evidence of chance witnesses. It is not the quantum of the evidence but the quality and credibility of the witnesses that lends assurance to the court for acceptance.
iii) Motive is a double-edged sword that cuts both sides/ways. If, on the one hand, it provided a motive for the accused to commit the occurrence in question, on the other hand, it equally provided to the first informant to implicate his rival. Based on the motive to commit the crime, the accused cannot lead a judgment of conviction. Prove of motive by itself may not be a ground to hold the accused guilty.

Conclusion: i) The evidential value of the First Information Report will be reduced if it is made after the unexplained delay.
ii) The evidence of chance witnesses can be accepted and conduct, presence at the time of occurrence, the opportunity to witness crime, normal conduct to victim, predisposition towards accused are some circumstances to be kept in view to accept their evidence.
iii) Motive is a double-edged sword that cuts both sides/ways but prove of motive by itself may not be a ground to hold the accused guilty.

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24. **Lahore High Court**
Malik Muhammad Yaqoob etc. v Government of the Punjab etc.
Writ Petition No.30365/2022
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC1365.pdf

Facts: Through this Constitutional Petition, the petitioners have challenged the orders passed by the respondents that the petitioners were not regularized on the ground that they were overage at the time of recruitment and later on also terminated their services.

Issue: What is the effect if age relaxation order passed by appointing authority has not been recalled/cancelled and in meanwhile the Regularization Policy and Notification were issued?

Analysis: If the age relaxation orders, passed by the appointing Authority under the Rules, being not set-aside/cancelled during the contract service, then the respondent-department has been estopped subsequently to deny regularization under Regularization Policy or Notification on the ground that the applicant at the time of appointment was beyond the prescribed age limit of 30 years.

Conclusion: If age relaxation order passed by appointing authority has not been recalled/ cancelled and in meanwhile the Regularization Policy and Notification were issued then regularization cannot be denied.

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25. **Lahore High Court**
Faisal Aziz Malik v. Returning Officer (PP-82-Khushab-1).
Election Appeal No.24133/2023
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2096.pdf

Facts: This Election Appeal has been filed under Section 63 of the Elections Act, 2017 against the order passed by the Returning Officer, whereby the appellant's nomination papers have been rejected through the impugned order for being outstanding liability of loan against the appellant.

Issues: i) What is the cut-off date for disqualification of a candidate under Article 63(1)(n) & (o) of the Constitution for failure to pay the loan, government dues and utility expense?
ii) Whether nomination papers can be rejected under Section 62(10) of the Act, 2017 when candidate entered into Settlement Agreement till the date for filing of nomination papers?

Analysis: i) The plain reading of Article 63(1)(n) of the Constitution shows that a person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora, if he has obtained a loan for an amount of two million rupees or more, from any bank, financial institution, co-operative society or cooperative body in his own name or in the name of his spouse or any of his dependents, which remains unpaid for more than one year from the due date, or has got such loan written off. Whereas under Sub-Article (o) of Article 63(1) of the Constitution, he will be disqualified, if he or his spouse or any of his dependents has defaulted in payment of government dues and utility expenses, including telephone, electricity, gas and water charges in excess of ten thousand rupees, for over six months, at the time of filing his nomination papers. The words "at the time of filing his nomination papers", used in Article 63(1)(o) of the Constitution, manifest that cutoff date envisaged under Article 63(1)(n) or (o) of the Constitution before which the disqualification be removed, is the time of filing

of nomination papers.

ii) No doubt Section 62(10) of the Act is a non obstante clause and under said sub-section where a candidate deposits any amount of loan, tax or government dues and utility expenses payable by him of which he is unaware at the time of filing of his nomination papers, such nomination papers shall not be rejected on the ground of default in payment of such loan, taxes or government dues and utility expenses. However, while interpreting similar Section 14(3A) of ROPA, the learned Full Bench of this Court in Rashid's Case supra held that this provision is inconsistent with Article 63(1)(o) of the Constitution and disrupts the harmony of the Constitutional provision which cannot be permitted through sub-constitutional legislation…Beside the above observation by the learned Full Bench of this Court, in any case the non-obstante provision of Section 62(10) of the Act can only be attracted where the candidate must show that he was unaware at the time of filing of his nomination papers about the loan, tax, government dues and utility expenses payable by him and he has paid the same before his nomination papers were rejected.

Conclusion: i) Cutoff date envisaged under Article 63(1)(n) or (o) of the Constitution before which the disqualification be removed, is the time of filing of nomination papers.

ii) Nomination papers cannot be rejected under Section 62(10) of the Act, 2017 when candidate entered into Settlement Agreement till the date for filing of nomination papers.

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26. **Lahore High Court**
Muhammad Iqbal v. Returning Officer, PP-85 Essa Khail.
Election Appeal No.24513/2023
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2122.pdf

Facts: This Election Appeal has been filed under Section 63 of the Elections Act, 2017 against the order passed by the Returning Officer, whereby the appellant's nomination papers have been rejected through the impugned order on the ground that his seconder did not appear at the time of scrutiny of his nomination papers.

Issues: i) Whether nomination papers of a candidate can be rejected due to absence of his seconder at the time of scrutiny?

ii) Whether non-appearance of proposer or seconder before returning officer, when specifically required for verification the genuineness of their signature or for any other purpose relating to the scrutiny of nomination papers can be fatal?

Analysis: i) The plain reading of sub-section (2) of Section 62 of the Act shows that the candidates, their election agents, the proposers and seconders and one other person authorized in this behalf by the candidate, and a voter who has filed an objection may attend the scrutiny of nomination papers. The word "may", used in Section 62(2) of the Act, depicts that it is not mandatory for the proposer and seconder to appear before the Returning Officer at the time of scrutiny and

therefore, without any objection from any person merely due to absence of the seconder at the time of scrutiny, the nomination papers of the appellant could not be rejected.

ii) No doubt, under Section 62(9) of the Act the Returning Officer may, on either of his own motion or upon an objection, conduct a summary enquiry and may reject the nomination papers, if he is satisfied with the grounds mentioned therein including that the signature of the proposer or seconder is not genuine. This provision cannot be construed that presence of proposer or seconder is mandatory but it means that where presence of proposer or seconder was specifically required by the Returning Officer to verify the genuineness of their signature or for any other purpose relating to the scrutiny of nomination papers then their absence could be fatal and nomination papers could be rejected. However, mere absence of the proposer or seconder cannot be a sole ground to reject the nomination papers.

Conclusion: i) Nomination papers of a candidate cannot be rejected due to absence of his seconder at the time of scrutiny.

ii) Non-appearance of proposer or seconder before returning officer, when specifically required for verification the genuineness of their signature or for any other purpose relating to the scrutiny of nomination papers can be fatal and nomination papers can be rejected.

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27. **Lahore High Court**
Muhammad Rizwan Nowaiz Gill v. The Returning Officer PP-77, Sargodha-VI, etc.
Election Appeal No.24144/2023
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2131.pdf

Facts: This Election Appeal is directed u/s 63 of the Elections Act, 2017 (Act) against the order passed by the Returning Officer whereby the nomination papers of the appellant were rejected.

Issues: i) Whether a specific order or declaration is to be passed by court for a person to be disqualified under Article 62 (1) (f) of Constitution?

ii) Whether issuance of general directions by Supreme Court to Election Commission in a judgment against a person, to initiate proceedings against all such persons who are accused of commission of corrupt practices or committing forgery, can be treated as declaration against such person under Article 62 (1) (f) of the Constitution?

iii) How the election laws more particularly disqualification provisions to disenfranchising a candidate ought to be construed?

Analysis: i) Whenever a person is required to be disqualified under Article 62 (1) (f) of the Constitution by the Court, a specific declaration in this regard is to be made.

ii) When no specific declaration under Article 62 (1) (f) of the Constitution was

passed in a judgment against a person but general directions were issued to the Election Commission to initiate criminal proceedings against all such persons who were accused of commission of corrupt practices or committing forgery. The said general observations cannot be treated as declaration against such person under Article 62 (1) (f) of the Constitution to debar him for lifetime to contest the elections…
iii) It is settled law that election laws more particularly disqualification provisions to disenfranchising a candidate, thus depriving him of a valuable right of franchise guaranteed under the Constitution are to be strictly construed and any ambiguity is to be resolved in favour of candidate who could be permitted to participate in the electoral process.

Conclusion: i) Whenever a person is required to be disqualified under Article 62 (1) (f) of the Constitution by the Court, a specific declaration in this regard is to be made.
ii) Issuance of general directions by Supreme Court to Election Commission in a judgment against a person, to initiate proceedings against all such persons who are accused of commission of corrupt practices or committing forgery, cannot be treated as declaration against such person under Article 62 (1) (f) of the Constitution.
iii) The election laws more particularly disqualification provisions to disenfranchising a candidate ought to be construed strictly and any ambiguity is to be resolved in favour of candidate who could be permitted to participate in the electoral process.

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28. **Lahore High Court**
Muhammad Osman Gull v. Federation of Pakistan etc.
W. P. No. 52559 of 2022
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC1548.pdf

Facts: Through this judgment instant writ petition as well various other writ petitions shall be decided. Petitioners, being taxpayers, have claimed the taxation under Section 7E of the Finance Act, 2022 as ultra vires of Federal Legislature's field of competence, listed in Entries 50 (post eighteenth amendment) and 47 of Fourth Schedule to the Constitution of Islamic Republic of Pakistan, 1973 ("the Constitution").

Issues: i) What is meant by taxation?
ii) How direct and indirect taxes are levied on taxpayer?
iii) Generally what types of taxes are imposed on a person or property and on transaction?
iv) Whether the federation can impose the tax on the items not mentioned in the Federal Legislative List?
v) Why after the 1962 Constitution till 18th Amendment, the Capital Gain Tax is excluded from Entry 47 and placed in Entry 50 of the Legislative List Part I?
vi) What is the effect of omitting the phrase, "on capital gains" from the Entry 50

of the Legislative List Part I through 18th Amendment?

vii) What is the effect of omission of Entries 45 & 46 along with amendment in Entry 50, where the phrase "taxes on immoveable property" is excluded after 18th amendment?

viii) What is the effect of inserting subsection (1A) and Section 7E in the Finance Act, 2022?

ix) Whether the Entry 47 of the Legislative List Part I admits the imposition of presumptive tax?

x) What is the Fair Market Value, introduced in Section 7E of the Finance Act, 2022?

xi) Whether the Federal Legislature is competent, under Entry 47 of the Legislative List, to treat fair market value of an immoveable property as income?

xii) Whether the clauses (i) to (iv) of Section 7E (2)(d) of Finance Act, 2022 of excluding some persons from the levy of Capital Value Tax are discriminatory in nature and against the fundamental rights guaranteed under Article 25 of the Constitution?

Analysis: i) Taxation is compulsory exaction or enforced contribution, collected by state, under its sovereign authority, to carry into effect its mandates and for performance of manifold functions by the governments at Federal, Provincial or Local Government level.

ii) Taxes are mainly classified as direct and indirect. Direct tax is one, burden of which cannot be shifted to someone else, but for indirect tax, it can be to end consumer. Direct taxes are primarily taxes on a natural person's net income or net worth. Taxes on net income are based on the taxpayer's ability to pay and taxes on net worth are levied on the total value of his assets owned, minus liabilities. Indirect taxes are levied on the production or consumption of goods and services or on transactions, including imports and exports.

iii) The event or incidence of all kinds of taxation, direct or indirect, is to be decided by the legislature through enactment, influenced by political, economic, and social factors, as well as international agreements and treaties. The incidence of taxation also determines whether the tax is on a person, property or a transaction. Taxes on a person or property are generally direct taxes, and tax on transaction is indirect for it goes with the transaction and falls where the transaction terminates.

iv) The Constitution of Pakistan recognizes the power of taxation, as basic characteristic of sovereignty, under its Article 7, with only condition that the state should be 'empowered by law' to impose any tax or cess. The condition is reiterated in Article 77 as is reflected in its caption "Tax to be levied by law only". Article 142 bestows legislative competence upon the Federation and the Provinces. The Federation has exclusive power to impose tax, through legislation, with respect to the kinds and nature of taxes mentioned in the Federal Legislative List [means Federal Legislative List in Fourth Schedule as defined in Article 70(4)] ("FLL") and the taxes not listed therein can only be imposed by the

Provinces.

v) After 1962 Constitution till 18th Amendment, immoveable property was always an essential component of Assets, bestowing competence to tax Capital Value of Assets to Federation. The exclusion of immoveable property was only for the purpose of charging Capital Gain Tax. The Capital Gain Tax always was and is a part of income tax, competence of which is under Entry 47, and reason for placing it in Entry 50 was to exclude the immovable property from the definition of Capital Assets, only for the purpose of capital gain.

vi) After change in Entry 50 through 18th Amendment, the effect of omitting the phrase, "on capital gains" is that now capital gain is taxable on immoveable property, under Section 37(1) of the Ordinance of 2001, because capital gain is not a tax on property but a limb of income tax, on the receipt or gain by a person on transfer or sale of property and not on the property.

vii) There is a difference between taxes on immoveable property and tax on income arising from immoveable property. Burden of income tax, including capital gain tax is on person who receives the income. Whereas burden of taxes on immoveable property is on the property and goes with the property if not taxed before the sale or transfer. Like Estate Tax paid by the estate itself, before assets are distributed to heirs and inheritance taxes are paid by those who inherit property. Gift tax is levied so that the inheritance and estate tax cannot be avoided by transferring property prior to death. In Pakistan, estate tax was charged under Estate Duty Act 1950, which was repealed in 1979, without any debate or deliberation. It was within competence of Federation under Entry 46 'Estate Duty on property' along with Entry 45 'Duties in respect of succession to property'. Both the entries, imposing tax on immoveable property, are repealed by 18th Amendment along with the amendment in Entry 50, where after the phrase "taxes on immoveable property" is excluding "taxes" on immovable property and not the immovable property itself from capital assets, value of which is to be taxed under Entry 50. Omission of Entries 46 & 45 along with amendment in Entry 50, collectively shows that all taxes, burden of which is on the immoveable property are excluded from competence of the Federation.

viii) The subsection (1A) and impugned Section 7E are inserted through Finance Act 2022, simultaneously. Agriculture land is now part of assets, for the purpose of capital gain tax. Self-owned agriculture land where agriculture activity is carried out is, however, excluded under Section 7E(2)(c), from chargeability of impugned tax. In impugned Section 7E, capital asset is separately defined under subsection (4)(a), which "means property of any kind held by a person, whether or not connect with a business". However, by sub clause (iv) to the subsection (4)(a), all moveable assets are excluded from the definition of asset. Interestingly, the levy under Section 7E has targeted only immoveable property by excluding all moveable assets from the definition of capital assets.

ix) It is important to note that presumptive tax was purely based on or akin to Entry 52 and it is observed, in particular, that Entry 47 does not admit the imposition of presumptive tax because the expression 'taxes on income' means

working out of income based on computation under various provisions of the taxing statute.

x) The Fair Market Value, before introducing it in Section 7E, is defined in Section 29(3) of the ITO 1979 for the purpose of determining the cost of acquisition to tax Capital Gain under Section 27, where profit and gain from transfer of a capital asset is deemed as income of the year in which transfer took place. Under Section 29(1) & (2), the fair market value is related to the date on which it become property of the assessee or the date of transfer and presumption here is for redetermination of the received profit and gain. Under Section 12(12) certain transactions of assets, like lease or purchase are deemed as income accrued or arise in Pakistan. The Commissioner is given power to determine the cost of acquisition, considering the sale or lease as per market value. The deeming under Section 12(12) is of a consideration of sale, purchase or lease, whereas under Section 7E there is no profit or gain or transfer of the asset, in particular of the immoveable property.

xi) Income is defined under Section 2(29) of the Ordinance of 2001, which uses expression "and any amount treated as income" to confer power of presuming income, but the word, "amount" has significance of receiving something, in other words only an amount or receipt can be presumed as income and not a notional fair market value. Since the phrase, "treated to have derived, as income", used in the impugned Section 7E, fails the test of the principles and the provisions, ibid, to presume anything as income, therefore, it is held that Federal Legislature is not competent, under Entry 47, to treat fair market value of an immoveable property as income. However, to save the legislation, within competence under Entry 50, the principle of reading down is applied and held that the phrase, ibid, shall not be read in subsection (2) as part of Section 7E.

xii) The legislature has excluded i) a Shaheed or dependents of a shaheed belonging to Pakistan Armed Forces ii) a person or dependents of the person who dies while in the service of Pakistan armed forces or Federal or provincial government iii) a war wounded person while in service of Pakistan armed forces or Federal or provincial government iv) an ex-serviceman and serving personal of armed forces or ex-employees or serving personnel of Federal and provincial governments, being original allottees of the capital asset duly certified by the allotment authority in clauses (i) to (iv) of Section 7E (2)(d) of Finance Act 2022 from taxing Capital Value Tax but the legislature has ignored the persons, who have inherited the immoveable property but are not capable of paying Capital Value Tax, particularly when the tax is on person and not the property. This omission makes the levy 'expropriatory and confiscatory', for those who might have to sell the asset to be taxed, for paying the tax. Equality clause in Article 25, envisages, in light of the judgments, that similarly placed persons or a class should bear, equal burden of a particular taxation; otherwise the persons who are left out and taxed shall bear extra burden of the tax, of those who are excluded from taxation. It offends fundamental rights guaranteed under Article 25 of the Constitution, hence being discriminatory in nature.

Conclusion: i) Taxation is enforced contribution, collected by state, under its sovereign authority, to carry into effect its mandates and for performance of manifold functions by the governments at Federal, Provincial or Local Government level.

ii) Direct taxes are primarily taxes on a natural person's net income or net worth and indirect taxes are levied on the production or consumption of goods and services or on transactions, including imports and exports.

iii) Generally, taxes on a person or property are direct taxes, and tax on transaction is indirect for it goes with the transaction and falls where the transaction terminates.

iv) No, the federation cannot impose the tax on the items not mentioned in the Federal Legislative List.

v) After the 1962 Constitution till 18th Amendment; the Capital Gain Tax is excluded from Entry 47 and placed in Entry 50 of the Legislative List Part I to exclude the immovable property from the definition of Capital Assets, only for the purpose of capital gain.

vi) The effect of omitting the phrase, "on capital gains" from the Entry 50 of the Legislative List Part I through 18th Amendment is that now capital gain is taxable on immoveable property, under Section 37(1) of the Ordinance of 2001 as the capital gain is not a tax on property but a limb of income tax, on the receipt or gain by a person on transfer or sale of property and not on the property.

vii) After 18th amendment, omission of Entries 45 & 46 along with amendment in Entry 50, collectively shows that all taxes, burden of which is on the immoveable property are excluded from competence of the Federation.

viii) By inserting subsection (1A) and Section 7E in the Finance Act, 2022 the agriculture land is now part of assets, for the purpose of capital gain tax. However, Self-owned agriculture land where agriculture activity is carried out is excluded under Section 7E(2)(c) from chargeability of impugned tax.

ix) Entry 47 of the Legislative List Part I does not admits the imposition of presumptive tax.

x) Fair Market Value, before introducing it in Section 7E the Finance Act, 2022, is defined in Section 29(3) of the ITO 1979 for the purpose of determining the cost of acquisition to tax Capital Gain under Section 27, where profit and gain from transfer of a capital asset is deemed as income of the year in which transfer took place.

xi) Federal Legislature is not competent, under Entry 47 of the Legislative List, to treat fair market value of an immoveable property as income.

xii) Yes, the clauses (i) to (iv) of Section 7E (2)(d) of Finance Act, 2022 of excluding some persons from the levy of Capital Value Tax are discriminatory in nature and against the fundamental rights guaranteed under Article 25 of the Constitution.

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29. **Lahore High Court**
Haroon Farooq v. Federation of Pakistan & others.
W.P No.59599 of 2022
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2023LHC1450.pdf

Facts: The petitioner invites this Court to square the provisions of section 124-A of PPC with Articles 14, 19 and 19A of the Constitution and to hold that since section 124-A of PPC contravenes and offends the fundamental rights enshrined in these Articles of the Constitution it is void in view of Article 8 of the Constitution which provides that any law insofar as it is inconsistent with the rights conferred by Chapter I Part II of the Constitution shall to the extent of such inconsistency be void.

Issues: i) How the offence u/s 124-A PPC is constituted; whether crime under this section is distinguished from other offences?
ii) Whether any fundamental right conferred through the constitution can be curtailed?
iii) Whether section 124-A PPC contravenes Article 19 of the Constitution of Pakistan 1973?
iv) What is the purpose of providing freedom to the press, whether it is linked with the freedom of speech?
v) Whether freedom of speech is incomplete without freedom of press?
vi) Whether section 124-A PPC has any impact on freedom of press?
vii) Why should not a citizen or a member of press be charged with sedition?
viii) Whether any limitation can be imposed on freedom of speech or press?
ix) What will be the effect on media and press if section 124-A of PPC is allowed to stand in its present form?
x) Whether the offence of sedition is comprised in any of the exceptions mentioned in article 19 of Constitution?

Analysis: i) The exciting or attempting to excite certain feelings to the authority of the Government is sufficient to constitute the offence. It follows that section 124-A is quintessentially a colonial law and has its genesis in the colonial rule. It was enacted to perpetrate and entrench British rule in the sub-continent. It has to be distinguished from other crimes which are commonly found to afflict a human society. Sedition belongs to the species of offences which had no other purpose but suppression of people's voices by the colonial masters.
ii) Constitutional democracy enshrines fundamental rights which are conferred upon people and the most cherished of those rights is the right to freedom of speech and expression. There cannot be an abridgement of speech unless it falls within the strict confines of the exceptions to Article 19 of the Constitution.
iii) S.124-A of PPC requires unpacking to establish that it contravenes Article 19. First and foremost, the offence, as couched, makes serious inroads into the right of freedom of speech and of the press. In a broadly worded provision which gives

wide leeway to a Government, the offence restricts spoken and written words both by the people and the press. This impacts the people in a number of ways.
iv) The whole purpose of providing for freedom of press is to enable democracy to flourish by keeping the citizenry informed and which will, in turn, feed into the entire democratic process through the right to vote. Thus both, right to freedom of speech and freedom of press are inextricably linked to each to form a whole and constitute the main planks on which the edifice of democracy rests. The Constitution makers did not merely provide a right to freedom of speech and expression but added a further condition that the press shall be free so that the flow and transmission of information to the citizens may not be censored.
v) Right to freedom of speech is incomplete without freedom of press and which in turn, secures the right to have access to information in all matters of public importance. The Constitution guaranteed freedom of speech by Article 19 and lest its significance be lost, enacted Article 19A to confer a right to have access to information in all matters of public importance.
vi) S.124-A of PPC seriously dents the right to publish freely by the press and to impart information through different platforms used by media. Any writings on political issues or discourse on matters of public importance may be caught by the mischief of S.124-A of PPC and would have the unpalatable effect of inhibiting free press.
vii) The people of this country are the masters and the holders of offices of the Government are the public servants. This situation cannot be rendered topsy-turvy by arming the public servants with the power to stifle the masters. Section 124-A of PPC connotes a stark regression in the protection of right guaranteed by Article 19 and must yield in its favour. Section 124-A of PPC is incompatible with the foundational principles of constitutional democracy and as a relic of past, must be consigned to oblivion. It has no place in a society which relishes new ideas and critical analysis to advance itself. The prohibition of mere criticism of Government that does not invite violence reflects an antiquated view of the relationship between the state and society.
viii) Article 19 of the Constitution expressly provides that the right of freedom of speech and expression are subject to reasonable restrictions imposed by law and enumerated in Article 19 itself. It permits restrictions to be imposed by law to save the interests expressly mentioned therein and one consequence of making rights subject to restrictions is that restrictions can be imposed to protect only those interests as are expressly mentioned and none other. It follows indubitably that the restrictions must have nexus with one of the expressly mentioned interests and none else. Cases abound where the superior courts have held that if a restriction did not cover the expressly mentioned interests, then that restriction offended against the Constitution and was ultra vires. Exceptions to freedom of expression must be justified as being necessary in a democracy.
ix) If section 124-A of PPC is allowed to stand in its present form, the media and the press would also be caught by its mischief and contrary to its role of informing the general public regarding issues of a political nature will be shackled

by its ability to do so by the provisions of section 124-A of PPC which would pose a constant threat to a free press to write freely and to dispense information without any fear of prosecution. In a true constitutional democracy the media and the press owe a duty to the public for dissemination of information. That duty is thrown into jeopardy by the provisions of section 124-A of PPC.

x) The offence of sedition enacted through section 124- A of PPC is not comprised in any of the exceptions mentioned in Article 19 of the Constitution. Further section 124-A of PPC abridges and limits political speech which cannot be countenanced in a free constitutional democracy with freedom of speech and press as the core values.

Conclusion: i) The exciting or attempting to excite certain feelings to the authority of the Government is sufficient to constitute the offence u/s 124-A PPC; crime under this section is distinguished from other offences.

ii) There cannot be an abridgement of speech unless it falls within the strict confines of the exceptions to Article 19 of the Constitution.

iii) Section 124-A of PPC contravenes Article 19 of the Constitution of Pakistan 1973.

iv) The purpose of providing for freedom of press is to enable democracy to flourish by keeping the citizenry informed and it is linked with the freedom of speech.

v) Freedom of speech is incomplete without freedom of press.

vi) S.124-A of PPC seriously dents the right to publish freely by the press.

vii) A citizen or a member of press should not be charged with sedition because section 124-A of PPC is incompatible with the foundational principles of constitutional democracy and as a relic of past, must be consigned to oblivion.

viii) Freedom of speech and expression are subject to reasonable restrictions imposed by law and enumerated in Article 19 itself.

ix) Section 124-A PPC would pose a constant threat to a free press to write freely and to dispense information without any fear of prosecution.

x) The offence of sedition enacted through section 124-A of PPC is not comprised in any of the exceptions mentioned in Article 19 the Constitution of Pakistan 1973.

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30. **Lahore High Court**
Civil Aviation Authority v. Haji Pervez Ahmad Khan & others.
I.C.A No. 296 of 2010
Mr. Justice Mirza Viqas Rauf Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC1435.pdf

Facts: Through this I.C.A, the petitioner has challenged the decision of the learned Single Judge whereby writ petition filed by respondents was accepted.

Issue: Whether the land acquired under Land Acquisition Act 1894 can be taken back on the ground of being lying surplus by the party from whom it was acquired?

Analysis: From the bare reading of the provisions of Capital Development Authority Ordinance, 1960 it clearly manifests that it contains an independent mechanism for the acquisition and the provisions of Land Acquisition Act. 1894 or the rules framed thereunder are alien to the scheme provided therein. Even if we assume that after vesting of the land in the Civil Aviation Authority by virtue of the Pakistan Civil Aviation Authority Ordinance, 1982 the provisions of the Land Acquisition Act, 1894 as well as rules framed thereunder would come into play in terms of Section 5(8) of the said 'Ordinance'. As per Rule 14 of the 'Rules of 1983' the power to restore the possession of acquired land to the persons from whom it was acquired lies with the Government and that too in the case, when the Department of the Government or a local authority for which land was acquired proposed to abandon the public purpose for which it was acquired. The respondents are claiming restoration of meagre part of acquired land on the ground that it has become surplus. Rule 14 ibid thus cannot be stretched in favour of the respondents.

The claim of the respondents that land in question has become surplus, is founded upon a demarcation report, which has no legal value unless it is weighed after recording of evidence. There are only oral assertions to this effect and there is no concrete material that the acquiring/beneficiary department did not utilize the land for the purpose for which it was acquired. Even otherwise, matter relating to return of acquired land cannot be left at the whims of the ex-landowners. Allowing the respondents to claim part of acquired land having become surplus would open a pandora box and a flood gate for other landowners as well.

Conclusion: The land acquired under Land Acquisition Act 1894 cannot be taken back on the ground of being lying surplus by the party from whom it was acquired.

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31. **Lahore High Court**
Nisar Ahmed v. Haji Fazal Dad.
Civil Revision No. 865-D of 2015
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2021LHC9997.pdf

Facts: Through this petition under Section 115 of the Code of Civil Procedure, 1908, the petitioner calls in question the judgment & decree dismissing his appeal against judgment & decree of the Trial Court, whereby his application seeking amendment in plaint was dismissed and respondent's application under Order VII Rule 11 of the Code ibid was allowed to the effect of rejection of plaint.

Issues: i) What would be the limitation for instituting a suit for pre-emption in case sale is effected through registered sale deed?
ii) If a case is covered by any specific earlier clauses i.e. section 30 (a) to (c) of the Punjab Pre-emption Act, 1991, then whether clause in section 30 (d) of said Act can be resorted to?

iii) Whether limitation for instituting a suit for pre-emption provided in section 30 of the Punjab Pre-emption Act, 1991 can be commanded and controlled by section 31 of said Act dealing with issuance of notice of sale?

Analysis: i) Section 30 of the Punjab Pre-emption Act, 1991 provides that the period of limitation for a suit to enforce a right of pre-emption shall be four months from the date: (a) of the registration of the sale deed; (b) of the attestation of the mutation, if the sale is made otherwise than through a registered sale deed; (c) on which the vendee takes physical possession of the property if the sale is made otherwise than through a registered sale deed or a mutation; or (d) of knowledge by the pre-emptor, if the sale is not covered under paragraph (a) or paragraph (b) or paragraph (c).

ii) Section 30 of the Punjab Pre-emption Act, 1991 provides four eventualities to compute the limitation for instituting a suit for pre-emption. All four are independent and contemplating different events for the purpose of calculating the limitation for a suit to enforce a right of pre-emption. Clause in section 30 (d) of Act ibid is not an exception to the provision, rather it is a residual provision and would only come into play if none of the preceding clauses are applicable or attracted.

iii) Sections 30 & 31 of the Pre-emption Act, 1991 are independent in their nature and both the provisions have no effect and impact upon each other. Had it been the intent of legislature to make the period of limitation provided under Section 30 of Act ibid as a subservient to the requirement of Section 31 of Act ibid, the legislature would have clearly indicated its intention by the use of appropriate expression and/or words in either of the two sections.

Conclusion: i) In case of sale through registered sale deed, the limitation for instituting a suit for pre-emption is four months from the date of the registration of such deed.

ii) If a case is covered by any specific earlier clauses of section 30 (a) to (c) of the Pre-emption Act, 1991, then section 30 (d) of Act ibid cannot be resorted to.

iii) The combined analysis of section 30 and section 31 of the Punjab Pre-emption Act, 1991, clearly reflects that limitation for instituting a suit for pre-emption cannot be commanded and controlled by the latter provision.

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32. **Lahore High Court**
Sakhi Muhammad, etc. v. Haji Ahmed, etc.
Civil Revision No.190-D of 2012
Mr. Justice MirzaViqas Rauf.
https://sys.lhc.gov.pk/appjudgments/2021LHC10003.pdf

Facts: This revision petition impugns judgment & decree dismissing appeal of petitioners preferred against preliminary decree passed by trial court in suit of respondents seeking decree of possession through partition along with permanent injunction in connection with joint suit property interse parties, pleaded to have attained residential character, wherein petitioners are allegedly intending to effect alienation in excess of their share.

Issues: i) When a party relying upon the private partition could claim any right in property in the suit for its partition?

ii) Whether the suit for partial partition of joint property is maintainable?

iii) What tests are for determination of agricultural status of land and if the status of suit property is determined as agricultural in nature, then whether the civil court has jurisdiction to adjudicate the matter?
(iv) What type and extent of constructions on agricultural land do not exclude it from the purview of section 135 of the Punjab Land Revenue Act, 1967, for the purposes of partition proceedings?
v) What is doctrine of election?

Analysis: i) Section 147 of Punjab Land Revenue Act, 1967 evinces that if a party is relying upon some family settlement with regard to partition of joint land, any party interested therein has to apply to the Revenue Officer for obtaining an order for affirmation of such partition. Furthermore, Chapter 18 of the Land Record Manual provides a procedure in partition cases and clause 18.1 especially deals with private partitions.
ii) Partition has to be sought for all the undivided immovable property and partial partition thereof would not be competent if the suit property is part of Khewat and is not separable from the property situated in other Khasra numbers of the same Khewat.
iii) In order to determine whether the land is agricultural, two tests are prescribed; one negative that is the property should not be occupied as the site of a building in town or village and the other positive that it should be occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture. If the answer to the first question be in the affirmative, then depending upon its' situation in a town or village, it is either urban or village immovable property; it is not agricultural land. But if it is land occupied or let for agricultural purposes, then the buildings on it are also agricultural land. The suit for immovable undivided property situated in Abadi Deh shall be triable exclusive by the Civil Court whereas immovable undivided property outside Abadi Deh shall be partitioned by revenue hierarchy. Section 135 of the Punjab Land Revenue Act, 1967 confers power upon a Revenue Officer to make partition of land, on application of any joint owner, whereas, Section 172 of the Act ibid excludes expressly jurisdiction of civil courts in any matter which the Government, Board of Revenue, or any Revenue Officer, is empowered by the Act to dispose of.
iv)The term “land” is defined in section 2(3) of the Punjab Alienation of Land Act, 1900,as that it means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture etc. Whereas, Section 3(1) of the Punjab Land Revenue Act, 1967, states that nothing in this Act applies to land which is occupied as the site of a town or village, and is not assessed to land revenue and section 136(b) (iii) of the said Act provides that partition of any land which is occupied as the site of a town or village, may be refused if, in the opinion of the Revenue Officer, the partition of such property is likely to cause inconvenience to the co-sharers or other persons directly or indirectly interested therein, or to diminish the utility thereof to those person.

v) The moment a party to lis intended to commence any legal proceedings to enforce any right, invoke a remedy or vindicate an injury, he had to elect from amongst hosts of actions or remedies available under the law. The doctrine of election is founded by the courts of law from the principles of waiver, abandonment of a known right, claim, privilege, relief as contained in Order II Rule, principles of res-judicata in Section 11of the Code of Civil Procedure, 1908 and estoppels in Article 114 of the Qanun-e-Shahadat Order, 1984.

Conclusion: i) In absence of any order of the Revenue Officer, party relying upon the private partition would be precluded to claim any right in joint land in a suit for partition of the same.

ii) The suit for partial partition of joint property is not maintainable.

iii) The matter of partition of agricultural land falls within the exclusive domain of Revenue Officer and the jurisdiction of Civil Court is barred under the law.

iv) In absence of sound proof of Abadi at the disputed land, without any notification of Collector or special orders of Board of Revenue showing the land in question having been included within the site of town and village, any constructions would not change nature of agricultural land and do not exclude it from the purview of section 135 of the Punjab Land Revenue Act, 1967.

v) The choice to initiate and pursue one out of host of available concurrent or co-existent proceedings/actions and remedy from a forum of competent jurisdiction is vested with the party to a lis but when once choice was exercised and election was made, then such party is precluded from launching another proceedings to seek a relief or remedy contrary to what would be claimed or achieved by adopting other proceeding/action and remedy, which in legal parlance is recognized as doctrine of election.

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33. **Lahore High Court**
Imtiaz Ali v. Muhammad Sadiq.
C.R.No. 206-D of 2023
Mr. Justice MirzaViqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC1621.pdf

Facts: The plaint, in petitioner's suit seeking decree for specific performance of agreement to sell etc., was rejected by learned trial court under Order VII, Rule 11 of the Code of Civil Procedure, 1908, and his consequent appeal against said order of rejection of plaint was dismissed as well, hence this petition under section 115 of Code ibid.

Issues: i) If a first suit seeking decree for specific performance of an agreement to sell is withdrawn with conditional permission of court to file a fresh one, then whether time spent in proceedings of such earlier suit may be deducted for the purpose of limitation of the subsequent suit?

ii) When revisional jurisdiction may be invoked under section 115 of the Code of Civil Procedure, 1908?

Analysis: i) In terms of Article 113 of the Limitation Act, 1908, suit for specific performance of an agreement to sell is to be instituted within three years from the date fixed for the performance or, if no such date is fixed, when the plaintiff has noticed that performance is refused. Order XXIII, Rule 2 of the Code of Civil Procedure, 1908 caters the situation that, for the purpose of limitation, first withdrawn suit is not to be taken into consideration at all and time spent there in proceedings of such earlier suit is not to be deducted for the subsequent suit whilst dealing with question of limitation. Limitation cannot be stopped if it once starts running.

(ii) The scope of revisional jurisdiction is circumscribed to the eventualities mentioned in section 115 of the Code of Civil Procedure, 1908. The revisional powers are limited and can only be exercised when the petitioner succeeds in establishing that the impugned order or judgment suffers legal infirmities hedged in section 115 of the Code ibid.

Conclusion: i) Earlier suit withdrawn with conditional permission of court to file a fresh one is not to be taken into consideration at all and time spent in proceedings of such suit is not to be deducted for the purpose of limitation of the subsequent suit.

ii) The revisional jurisdiction may be invoked only if some patent illegality is floating on the surface of the record.

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34. **Lahore High Court**
Gulzar Hussain etc., v. Abdur Rasool etc.
C.R.NO. 1038 of 2014
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC1628.pdf

Facts: The respondent no.1 being the legal heir of the daughter of deceased original owner of suit property filed a suit for declaration claiming that the inheritance mutations relating to the legacy of said deceased have been sanctioned illegally depriving his daughter. Said suit was decreed followed by dismissal of consequent appeal. This petition under section 115 of Civil Procedure Code, 1908, is filed against both said concurrent judgments & decrees.

Issues: i) Has the time limitation any effect on right of filing a suit to challenge the validity of mutations of inheritance?

ii) What is the scope of revisional jurisdiction?

Analysis: i) When the validity of mutations is questioned on basis of fraud and misrepresentation then the limitation starts from the date of knowledge. But limitation cannot be pleaded as a hurdle in the way of claiming right of inheritance. Under the Muslim Law of inheritance, the land automatically devolved on legal heir, the moment predecessor died. It is immaterial that ownership of the legal heir was not recorded in the mutation of inheritance, which is not a title document. The legal heir was a co-sharer in the land in dispute to the

extent of share since time of death of her predecessor, thus there was no question of suit being barred by time.
ii) The jurisdiction of revision is not meant to unearth another possible view from the evidence which is contra to the findings rendered by two courts of competent jurisdiction. The jurisdiction of revision is to be exercised while keeping in view the principles enshrined in section 115 of CPC.

Conclusion: i) Law is settled that no one will be deprived of his/her ancestral property on the basis of fraud merely on account of limitation.
ii) The exercise of powers of revision is always guided by the necessary pre-conditions laid down in the section 115 of CPC.

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35. **Lahore High Court**
Muhammad Younis etc. v. Federation of Pakistan through Secretary Defence, Islamabad etc.
W.P.No.251251/2018
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC1350.pdf

Facts: Brief facts of the case, as mentioned in this constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 are that the petitioners are owners of land situated in revenue estate of District. Military Lands & Cantonments authorities took possession of the land including the land owned by the petitioners for establishing Cantonment and constructed a boundary-wall around it. Thereafter, the respondents dispossessed the petitioners from their aforesaid owned land. The petitioners alleged that the possession of land was taken without adopting the legal process.

Issue: Whether State or its Department without the consent of the owner and without purchasing and acquisitioning can get possession of his land?

Analysis: As a moral, religious, constitutional and legal sanctity is attached to the fundamental rights of the citizen under Articles 23, 24 & 38 of the Constitution, whereby every citizen has the right to hold and use his property for his fiscal and social wellbeing and Article 3 of the Constitution placed the state under obligation to eliminate all forms of exploitation of citizens. Thus, it is not behove of a State or its Department to take away property of the individual without adhering to the principle of law. There is no cavil and cudgel that fortunately we have a written Constitution and written law with regard to every field of life and State institution/government functionary are placed under mandatory obligation to act in accordance with law, thus any willful non-compliance of the principles of law will be a dangerous menace which would lower the dignity of the country in the Comity of the Nations. Thus, the right to hold and use of the land by the owner of the said land cannot be taken away forcibly at the whims & caprice of State functionaries except as provided under the law and after payment of fair compatible compensation.

Conclusion: Forcible taking over possession of land of citizen by state functionaries without acquiring the land in accordance with law and without payment of any compensation is not only illegal but also unconstitutional.

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36. **Lahore High Court**
Commissioner Inland Revenue, Zone-II, LTU, Lahore v. M/s Shezan International Ltd., Lahore
PTR No.147 of 2013
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC1379.pdf

Facts: The respondent taxpayer, a public limited company, filed income tax return but same was amended being found erroneous. The respondent-taxpayer filed appeal before Commissioner (Appeals) which was partially allowed and feeling aggrieved, the respondent filed second appeal which was allowed. Hence, instant tax reference by department.

Issue: Whether merger of two or more companies give rise to any taxable event?

Analysis: It is well-settled that merger of two or more companies is essentially a process of corporate reconstruction whereby assets of merging companies were either clubbed or brought together in the surviving or new company, however, proprietary rights of assets remained intact. No financial transaction could be said to have taken place between the merging companies. As such in the scheme of merger arrangement, there does not take place any sale, disposition, exchange or relinquishment or extinguishment of any right on the part of the amalgamating companies that gives rise to any income or gain resulting in a taxable event. If upon merger, the net assets of the merging companies remain unaltered as also the proprietary interest of the shareholders in the amalgamated company remains the same, a corporate merger does not give rise to any taxable event.

Conclusion: If upon merger, the net assets of the merging companies remain unaltered as also the proprietary interest of the shareholders in the amalgamated company remains the same, a corporate merger does not give rise to any taxable event.

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37. **Lahore High Court**
Director Intelligence & Investigation-FBR, through Additional Director, Faisalabad v. Muhammad Imran & others.
Customs Reference No.66929 of 2022
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2126.pdf

Facts: The applicant-department filed reference application under Section 196 of the Customs Act, 1969 pertaining to dismissal of an appeal of the applicant-department by the Customs Appellate Tribunal.

Issue: Whether the jurisdiction for adjudication in respect of Section 32 of the Customs Act, 1969 lies with the customs officials at the port of entry or with the customs

officials at the port of destination?

Analysis: If any mis-declaration is made by the importer, it is deemed to be in contravention to the provisions of section 32(1) of the Act of 1969, however this provision does not provide any guidance in respect of jurisdiction for adjudication by the customs officials. This provision read with Rules 335 & 338 merely empowers the customs officials at the port of entry to examine whether the declaration made is correct and goods correspond to the declaration. These provisions give authority to customs officials at entry stage to take cognizance of the contravention, if any, but it will not confer the powers of adjudication as well which will remain with the customs officials posted at the port of destination.

Conclusion: The jurisdiction for adjudication in respect of Section 32 of the Customs Act, 1969 lies with the customs officials at the port of destination.

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38. **Lahore High Court**
Ghulam Shabbir @ Shaboo v. The State, etc.
Criminal Appeal No.1344 of 2019
Mr. Justice Asjad Javaid Ghural, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC10020.pdf

Facts: Through this criminal appeal the appellant assailed the judgment passed by the learned Additional Sessions Judge, whereby at the conclusion of the trial, in case F.I.R registered under Section 9(c) of the Control of Narcotic Substances Act, 1997, he was convicted and sentenced to rigorous imprisonment for four years and six months with fine of Rs.10,000/- and in default thereof to further undergo simple imprisonment for three months. The benefit of Section 382-B Cr.P.C. was extended to the appellant.

Issues: i) What is the purpose of Section 342 Cr.P.C?
ii) Whether it is necessary to put every important and incriminating material before accused so as to enable him to answer and explain his position?
iii) Whether the word 'generally' appearing in sub section (1) of Section 342 Cr.P.C. does limit the nature of the questioning?
iv) Whether the statement of an accused under Section 342 Cr.P.C. is mere a formality and evidence which is not put to him during such statement can be used against him?

Analysis: i) Bare reading of Section 342 Cr.P.C. it is manifestly clear that the entire purpose of this Section is to afford the accused a fair and proper opportunity of explaining circumstances, which appears against him.
ii) It is necessary that attention of the accused must be brought to all the vital parts of the evidence brought against him by the prosecution, which is likely to be considered by the Court against him. The purpose is to establish a direct dialogue between the Court and the accused and to put every important and incriminating material before him so as to enable him to answer and explain his position. The

question put to an accused must be fair and couched in a manner, which even an ignorant and illiterate person may be able to appreciate and understand.
iii) The word 'generally' appearing in sub section (1) of Section 342 Cr.P.C. does not limit the nature of the questioning to one or more questions of a general nature relating to a case but it means that the question should relate to the whole case generally.
iv) The statement of an accused under Section 342 Cr.P.C. is not a mere formality rather it was a bounden duty of the trial Court to question the accused on proven circumstances or proven evidence. The circumstances/ evidence, which is not put to an accused in his examination under Section 342 Cr.P.C., cannot be used against him and liable to be excluded from consideration.

Conclusion: i) The purpose of Section 342 Cr.P.C is to afford the accused a fair and proper opportunity of explaining circumstances, which appears against him.
ii)Yes, it is necessary to put every important and incriminating material before accused so as to enable him to answer and explain his position.
iii) The word 'generally' appearing in sub section (1) of Section 342 Cr.P.C. does not limit the nature of the questioning but it means that the question should relate to the whole case generally.
iv) The statement of an accused under Section 342 Cr.P.C. is not a mere formality and evidence which is not put to him during such statement cannot be used against him.

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39. **Lahore High Court**
Sh. Irfan Raza v. Province of Punjab, etc.
Writ Petition No.67011/2021
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2021LHC10045.pdf

Facts: By way of this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks direction to respondents No.2 & 3 for decision of his application moved before them within the stipulated time.

Issue: What is the main responsibility of the petitioner seeking the issuance of the writ of mandamus?

Analysis: The petitioner has not been able to show as to why sought for writ of mandamus be issued. Mandamus is not writ of right it is not consequently granted of course but the Court exercises this discretion only if it is convinced that the petitioner has come to the Court with clean hands and for just cause. Apparently, the petitioner has his own axe to grind behind the scene and by means of filing this writ petition he has made an abortive attempt to use the authority of this Court as a tool to reach at his desired goal. The petition contains ambiguous and general nature of allegations against various officials/officers of Canal Department without any substantive material. If the petitioner has any proof qua the illegality of the

officials, he may approach high ups of the said department. Apparently, the petitioner is trying to use the shoulder of this Court to harass and blackmail the public functionaries which cannot be allowed.

Conclusion: The petitioner must show that he has come to the Court with clean hands and for just cause.

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40. **Lahore High Court**
Mubbashar Farooq v. Addl. Sessions Judge, etc.
Crl.Misc.26602-M/2022
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2022LHC9098.pdf

Facts: Through this petition under Section 561-A Cr.P.C. the petitioner has called in question validity of impugned orders passed by the learned courts below. The learned Trial Court dismissed application under Section 249- A Cr.P.C. for pre-mature acquittal in case in respect of an offence u/s 489-F PPC, and the learned Revisional Court dismissed his revision against the order of learned Trial Court.

Issues: i) Whether the Magistrate is empowered to acquit an accused at any stage of the case?
ii) What are the pre-requisites for constitution of an offence under Section 489-F PPC?

Analysis: i) The Legislature has empowered the Magistrate to acquit an accused at any stage of the case, if after hearing the Prosecutor and accused it arrived at a definite conclusion that the charge is groundless or there is no probability of conviction of the accused.
ii) There are following three pre-requisites for constitution of offence under Section 489-F PPC:- (i) Issuance of cheque with dishonest intention. (ii) Cheque was issued towards payment of loan or fulfilment of an obligation. (iii) Cheque was dishonoured.

Conclusion: i) The Magistrate is empowered to acquit an accused at any stage of the case if the charge is found to be groundless or there is no probability of conviction of the accused..
ii) Issuance of cheque is with dishonest intent, payment of loan or fulfilment of obligation and finally cheque dishonoured are the pre-requisites to constitute an offence u/s 489-F PPC.

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41. **Lahore High Court**
Azhar Nawaz v. Addl. Sessions Judge, etc.
Writ Petition No. 67828/2022
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2022LHC9104.pdf

Facts: Through this writ petition, the petitioner has challenged the legality and propriety

of order passed by the learned Ex-Officio Justice of Peace, whereby upon the application of respondent filed under Section 22-A Cr.P.C. a direction has been issued for registration of case against the petitioner.

Issue: Whether a cheque issued by an account holder to himself can create any criminal liability?

Analysis: While going through the section 489-F PPC, one can easily draw the conclusion that foundational element to constitute an offence under this provision is issuance of cheque with dishonest intent, the cheque should be towards repayment of loan or fulfillment of an obligation and lastly that the cheque in question is dishonoured. It is thus quite evident that in order to attract the provision of Section 489-F PPC, intention of the account holder to cause wrongful gain to one person or wrongful loss to another was sina qua non. In case where there was a "self cheque" it can easily be presumed that the amount for which the cheque was issued was to be paid to the drawer himself and obviously the drawer would not dishonestly issue cheque to himself and the said cheque in any eventuality cannot be presumed to be issued towards repayment of loan or fulfillment of any obligation to oneself. For clarity, it is held that if in column of "pay" of any cheque, the word "self" "cash", "in person" is written or left blank then offence under Section 489-F PPC is not made out. Now the question arises that if the cheque is issued to "Self" but the same was handed over to someone else for collection of funds and upon its dishonor if such person approaches the police for registration of case then what would be its fate. The answer is quite simple and straightforward. In that eventuality, it would only be considered a bearer cheque open for encashment by anyone to whom the drawer does not owe or might not intended to pay anything.

Conclusion: A cheque issued by an account holder to himself doesn't create any criminal liability.

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42. **Lahore High Court**
Muhammad Zubair v. The State & another.
Criminal Appeal No.265 of 2015
Shaukat Hussain v. The State & another.
Criminal Revision No.152 of 2015
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2021LHC10036.pdf

Facts: Learned Additional Sessions Judge, for offences under Sections 302, 337-F(i), 337-F(ii), 148 & 149 PPC, at the conclusion of trial convicted the appellant under Section 302(b) PPC and sentenced to Rigorous Imprisonment for life and to pay the compensation of Rs.400,000/- to the legal heirs of deceased under Section 544-A Cr.P.C. and in default thereof to further undergo simple imprisonment for six months along with benefit of Section 382-B Cr.P.C.The appellant filed criminal appeal against his conviction and sentence and the complainant also

sought enhancement of sentence of convict through filing separate Criminal Revision.

Issues: i) Whether prompt lodging the crime report as well as sharp proceedings of the post mortem examination on the dead body of the deceased rules out every hypotheses of fabrication?
ii) Whether under section 302 (c) P.P.C. the quantum of sentence is under discretion of the Court?
iii) Whether sudden provocation, spur of the moment and exclusion of pre-meditation at the time of occurrence are necessary elements to be proved in order to get benefit of section 302 (c) PPC?

Analysis: i) The promptness in lodging the crime report as well as sharp proceedings of the post mortem examination on the dead body of the deceased rules out every hypotheses of consultation, fabrication and deliberation.
ii) In the mischief of Section 302 (c) P.P.C. the legislature has left the quantum of sentence under discretion of the Court keeping in view facts and circumstances of each case.
iii) Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner. While inflicting sharp edged weapon at the most vital part of the body of the deceased, the assailant acted in a cruel manner, which is yet another factor making him ineligible for the benefit of above said exception.In such circumstances there exists no occasion of sudden provocation, spur of the moment and exclusion of pre-meditation at the time of occurrence in order to bring the aassailant's case under the ambit of Section 302 (c) PPC.

Conclusion: i) Yes, prompt lodging the crime report as well as sharp proceedings of the post mortem examination on the dead body of the deceased rules out every hypotheses of fabrication.
ii) Yes, under section 302 (c) P.P.C. the quantum of sentence is under discretion of the Court.
iii) Yes, sudden provocation, spur of the moment and exclusion of pre-meditation at the time of occurrence are necessary elements to be proved in order to get benefit of section 302 (c) PPC.

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43. **Lahore High Court**
The State v. Muhammad Ishaque
Writ Petition No.13218/2018
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC1443.pdf

Facts: The petitioner called in question validity of an order passed by the Judge Electricity Utilities Court, whereby thesaid court while referring to the provisions

of Section 462-O PPC opined that in cases of theft of electricity only a "complaint" can be filed by a duly authorized officer and the FIR could not be registered in such like cases.

Issue: Whether the provisions of Section 462-O PPC prohibit registration of First Information Report in offences mentioned in Chapter XVII-B, PPC?

Analysis: By declaring the offences mentioned in Chapter XVII-B as cognizable intention of the legislature is manifestly clear that registration of FIR in such like offences was very much permissible… taking cognizance of an offence by a Court is entirely a distinct feature from lodging of the crime report or investigation of an offence by the police or any other investigating agency… Section 462-O PPC only deals with taking cognizance of an offence by a Court, as such the same does not place an embargo upon reporting of an offence by the Officer not below Grade-17 to the police or registration of FIR pursuant to such report/complaint. There seems no confusion in the criminal jurisprudence that in order to cause arrest of an accused in a cognizable offence, registration of FIR is *sina qua non*. Therefore, by no stretch of imagination it can be concluded that by inserting Section 462-O PPC intention of the legislature was to place an embargo upon registration of First Information Report in cases mentioned in Chapter XVII-B.

Conclusion: The provisions of Section 462-O PPC does not prohibit registration of First Information Report in offences mentioned in Chapter XVII-B, PPC.

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44. **Lahore High Court**
Muhammad Imran v. The State etc.
Criminal Appeal No.157/2012
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2021LHC10027.pdf

Facts: The appellant has challenged the vires of judgment passed by the Additional Sessions Judge in a case FIR in respect of offence under Sections 302 & 34 of Pakistan Penal Code, 1860 whereby he was convicted and sentenced with imprisonment for life.

Issues: (i) Whether the testimony of a witness in a criminal trial can be relied upon once he proves to have made material improvements?
(ii) What is the effect of inordinate delay in conducting post-mortem examination of a dead body?
(iii) Whether the statement of an accused is to be considered in its entirety and accepted as a fact in case the prosecution evidence is discarded?

Analysis: (i) It is well settled principle of criminal administration of justice that once a witness proves to have made material improvements, his testimony cannot be relied upon.
(ii) The inordinate delay in conducting the post-mortem examination of dead body

is indicative of the real possibility that the time had been consumed by the prosecution for maneuvering and concocting the prosecution story and manage the eye witnesses against the appellant.
(iii) It is well settled law that when the prosecution evidence is discarded, the statement of an accused is to be considered in its entirety and accepted as a fact.

Conclusion: (i) The testimony of a witness in a criminal trial cannot be relied upon once he proves to have made material improvements.
(ii) An inordinate delay in conducting the post-mortem examination of dead body creates doubts regarding truthfulness of the prosecution story as well as the presence of eye witnesses at the place of occurrence at the time of occurrence.
(iii) The statement of an accused is to be considered in its entirety and accepted as a fact in case the prosecution evidence is discarded.

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45. **Lahore High Court**
Zubaida Khanum v. District Police Officer etc.
Writ Petition No. 18561/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2106.pdf

Facts: This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution"), is directed against the order passed by the Ex-officio Justice of Peace, whereby the application of the petitioner for the registration of a cross version was dismissed.

Issues: (i) Can second FIR be registered on a new/different version of the same incident involving the commission of a cognizable offence?
(ii) Can a cross-version be recorded in a case after the conclusion of the trial?

Analysis: i) In Pakistan, there was a lack of judicial consensus on registering a second FIR. Finally, in Sughran Bibi v. The State (PLD 2018 SC 595), a 7-member Bench of the Supreme Court rendered an authoritative decision which also addressed the ancillary question of how the police should record and investigate new/different versions of the same incident if a second FIR cannot be registered. The apex Court held that the FIR is essentially an "incident report" because it informs the police for the first time that an occurrence involving the commission of a cognizable offence has taken place. Once the FIR is registered, the occurrence is regarded as a "case", and every step in the ensuing investigation under sections 156, 157, and 159 Cr.P.C. is a step taken in that case. The Investigating Officer should not be swayed by the contents of the FIR, and he is under no obligation to establish that version. He must instead find out the truth. He should gather information from those who appear to be familiar with the details of the incident. A fresh FIR is not required for each new piece of information he obtains during the process or the discovery of a new circumstance relevant to the commission of the offence. Such further information or knowledge is part of the ongoing

investigation into the same case, which began with the registration of the FIR. After completing the investigation, the Investigating Officer should file a report under section 173 Cr.P.C. on the real facts that he discovers, regardless of the version of the incident advanced by the first informant or any other version brought to his notice by any other person. In Sughran Bibi, the Supreme Court iterated that the power to investigate is related to the offence and is not limited to the facts mentioned in the FIR. If the information received by the police about the commission of a cognizable offence also includes details of how and by whom it was committed, or anything regarding its background, that is only the informant's version of the incident. The Investigating Officer should not accept it unqualifiedly as the whole truth. Moreover, all versions of the incident are recorded under section 161 Cr.P.C., whether supplemental or divergent, and all of them are part of the same "case" that originated with the registration of the FIR as aforesaid. The restriction under section 154 Cr.P.C. that FIRs can be registered only regarding cognizable offences does not apply to cross versions. It is for the obvious reason that they are recorded under section 161 Cr.P.C., as mandated by Sughran Bibi. However, registration of a cross-version does not obligate the Investigating Officer to arrest the accused immediately. There must be sufficient justification for it. Finally, in view of the Supreme Court's ruling in Sughran Bibi, there is no scope for recording a second FIR for the same incident, even for a cross version.

ii) Although reinvestigation or further investigation is permissible, it cannot be done routinely. There are several limitations, one of which is that it cannot be when the trial is over. Bahadur Khan v. Muhammad Azam and others (2006 SCMR 373) is a case in point. According to the facts, Dilawar Khan was driving a Datsun pickup when he hit Raza and killed him. Raza's family alleged that it was a murder rather than an accident. Consequently, they shot Dilawar in retaliation a few months later. Bahadar Khan lodged FIR in respect of that occurrence. The trial court convicted accused Muhammad Arif and sentenced him to death but acquitted co-accused Muhammad Akram and Mir Hassan of the charge. The High Court acquitted Arif and convicted Akram and Mir Hassan, and sentenced them to life. The Supreme Court set aside Mir Hassan's conviction but upheld Akram's conviction and sentence. Subsequently, the prosecution submitted challan under sections 212, 120-B/34 PPC against two more persons, Muhammad Azam and Abdullah Khan, in the court which conducted the previous trial. The Additional Sessions Judge convicted Muhammad Azam under section 212 PPC and acquitted Abdullah, his co-accused. Bahadur Khan contended before the Supreme Court that the facts constituting the offence under sections 212 and 120-B/34 PPC came to light during the investigation of another case having nexus with the murder case of Dilawar Khan. Therefore, on completion of the investigation, a challan, which was in continuation of the one filed earlier, was submitted to the trial court that decided the murder case. Bahadur argued that the subsequent challan was competent and the Additional Sessions Judge had rightly convicted Muhammad Azam. There was no prohibition on the police to reinvestigate or further

investigate the lateral aspects of the case which came to light subsequently. They could submit a new report under section 173 Cr.P.C. However, no law allows recording a statement under section 161 Cr.P.C. once a case is decided. After the Supreme Court's ruling in Sughran Bibi that all versions after filing the FIR are recorded under section 161 Cr.P.C., reinvestigation or further investigation in a concluded case is impossible. Since Sughran Bibi's case merely prohibits the registration of a second FIR, not a cross-version. Therefore, so long as the trial has not concluded, it can be permitted, even at a belated stage, to prevent a miscarriage of justice. If the (original) FIR has been taken to its logical end, the only option for the individual who wishes to prosecute another on his cross-version is to file a private complaint.

Conclusion: i) After the Supreme Court's ruling in Sughran Bibi case, there is no scope for recording a second FIR for the same incident, even for a new/different/cross version.

ii) A cross version cannot be recorded in a case after the conclusion of trial.

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46. **Lahore High Court**
Muhammad Waqar alias Fauji v. The State etc.
Crl. Misc. No.76558/T/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2141.pdf

Facts: By this petition under section 526 Cr.P.C., the petitioner seeks the transfer of the aforesaid case from one court to another court of competent jurisdiction on the ground that the instructions issued by the High Court have not been followed for determining the venue of the trial.

Issue: In Sessions trials, whether a magistrate must seek the choice of the accused person/s regarding the venue of his/their trial except Hadood cases while exercising his powers u/s 190 Cr.P.C?

Analysis: According to the instructions of the Lahore High Court conveyed through letter No.7886/RHC/MIT of 25th May 1999, session cases (excluding Hadood cases) should normally be tried at the District Headquarters. Nonetheless, when the accused appears before the Magistrate for the purpose of section 190 Cr.P.C., he should give him the choice of a trial at the subdivision. If there are multiple accused and they all do not consent to the trial at the sub-division, the Sessions Judge shall decide the place of trial at his discretion. In the present case, the Magistrate observed that the case was exclusively triable by the Court of Session and mechanically forwarded it to the Sessions Judge, Narowal, for "appropriate orders". As per the supra letter, he was obligated to ask the accused whether they preferred that their trial be held at the District Headquarters or the Sub-Division when they appeared before him. He was required to document the fact that he had provided such an option to the accused. Nothing on the record indicates that he gave the petitioner and his co-accused that choice. The supra letter gives the

accused a valuable right to choose the place of trial which cannot be denied to him. If the complainant party has any issue, it has a legal remedy under section 526 Cr.P.C.

Conclusion: A magistrate must seek the choice of the accused person/s regarding the venue of his/their trial except Hadood cases while exercising his powers u/s 190 Cr.P.C.

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47. **Lahore High Court**
Ghulam Fareed v. Government of Punjab, etc.
W.P. No. 78710 of 2022
Mr.Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC1609.pdf

Facts: Through this constitutional petition, the petitioner has called in question the action of the respondents, whereby despite being at Serial No. 1 of the merit list on the basis of written exam, the petitioner has not been selected for appointment against the post of Constable.

Issue: Whether a High Court can interfere in marks awarded by the Interview Board?

Analysis: As regards the question of failure in interview on account of obtaining less mark than required, this court may refer to some cases earlier decided by courts of law. The Hon'ble Supreme Court of Pakistan in judgment reported as 2014 SCMR 157 (Muhammad Ashraf Sangri v. Federation of Pakistan and others) while considering the cases of employees, who had not been selected on the basis of interview has observed that High Court cannot interfere in marks awarded by the Interview Board unless mala fide or bias or for that matter patent error is floating on the surface of the record because an interview is a subjective matter relating to fitness of any candidate for a particular post and could at best be assessed by functionaries, who were entrusted with such responsibility.

Conclusion: High Court cannot interfere in marks awarded by the Interview Board unless mala fide or bias or for that matter patent error is floating on the surface of the record.

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48. **Lahore High Court**
Mazhar Hussain and others v. Mst. Jantan Bibi and others.
C.R. No.20075 of 2023
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC1598.pdf

Facts: The petitioners filed revision petition regarding a suit for declaration filed against the respondents which was concurrently dismissed by the trial court as well as the first appellate court.

Issues: i) When does the limitation period commences for enforcement of contract of sale the performance of which is refused?
ii) Whether an appellate court has jurisdiction to consider request of a party for

permission of additional evidence if the party had never applied for additional evidence before the trial court?
iii) Whether an appellate court is required to decide an appeal by recording issue-wise findings?

Analysis: i) The provision of Article 113 of the Limitation Act, 1908 mandates that in the cases where date is fixed for the performance of the contract in the agreement itself then three years period will commence from the date so mentioned therein and if no such date is fixed then from the date the buyer had noticed that the performance was refused..
ii) Under Rule 27 of Order XLI, C.P.C. the appellate court has jurisdiction to consider the permission for additional evidence provided the evidence was refused by the court below illegally or the appellate court while considering the evidence on record reaches the conclusion that additional evidence is necessary for the correct determination of the case or that the existing evidence is not sufficient to reach the conclusion one way or the other.
(iii) Order XX, Rule 5, C.P.C. applies to the suit and to the judgment of the trial court, the trial court decided the case issue-wise and recorded independent findings for rendering decision on all the issues. In appeal under Rule 31 of Order XLI, C.P.C. the court was required to consider the points raised in appeal at the time of hearing, the reasons recorded bythe trial court and to decide the same by recording the reasons thereof. Appellate court is not required to decide the appeal by recording issue-wise findings but only the points raised at the time of hearing were to be looked into.

Conclusion: i) The limitation period for enforcement of contract of sale, the performance of which is refused, commences from the date as fixed for the performance of the contract in the agreement itself and if no such date is fixed then from the date the buyer had noticed that the performance was refused.
ii) An appellate court should not consider request of a party for permission of additional evidence if the party had never applied for additional evidence before the trial court except where the appellate court while considering the evidence on record reaches the conclusion that additional evidence is necessary for thecorrect determination of the case or that the existing evidence is not sufficient to reach the conclusion one way or the other.
iii) An appellate court is not required to decide an appeal by recording issue-wise findings but only the points raised at the time of hearing are to be looked into.

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49. **Lahore High Court**
The State v. Muhammad Ashraf.
Murder Reference No. 13 of 2021
Muhammad Ashraf v. The State and another.
Criminal Appeal No. 418 of 2021
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC9438.pdf

Facts: The learned trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant in case FIR registered in respect of an offence under section 302 P.P.C. and feeling aggrieved, appellants lodged the Criminal appeal assailing his conviction and sentence.

Issue: i) What is the bounden duty of a chance witness for confidence inspiring evidence?
ii) What is effect of non-production of vehicle used by chance witness to arrive at the place of occurrence?
iii) What are Estimator variables and how these leads to misidentifications?
iv) What can be inferred from the open eyes and mouth of the deceased?

Analysis: i) It is bounden duty of a chance witness to provide a convincing reason for his presence at the place of occurrence, at the time of occurrence and is also under a duty to prove his presence by producing some physical proof of the same.
ii) The non-production of the vehicle used by the chance witness to arrive at the place of occurrence and the failure of the Investigating Officer of the case to produce the same before the learned trial court leads to only one conclusion that being a chance witness he failed to prove the mode through which he arrived at the place of occurrence. His failure to prove the said fact can vitiate the trust in his being a truthful witness.
iii) Estimator variables are factors related to the witness, like distance, lighting, or stress during the occurrence, which factors are directly related to the capacity of a witness to first observe and then to retain the features of the accused for him to subsequently remember them with such clarity so as to make a correct identification later during the test identification parade proceedings. The scientific research establishes that "estimator variables" negatively affect the memory process. In the tumult of the occurrence, the possibility of false identification does exist. An assortment of Estimator variables can affect and cloud memory and lead to misidentifications.
iv) The open eyes and mouth of the deceased force a hostile interpretation against the prosecution's version regarding the presence of the prosecution witnesses at the place of occurrence, at the time of occurrence.

Conclusion: i) It is bounden duty of chance witness to provide a convincing reason for his presence at the place of occurrence.

ii) The non-production of the vehicle used by the chance witness can vitiate the trust in his being a truthful witnesses.
iii) Estimator variables are factors related to the witness, like distance, lighting, or stress during the occurrence.
iv) The open eyes and mouth of the deceased force a hostile interpretation against the prosecution's version regarding the presence of the prosecution witnesses.

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50. **Lahore High Court**
The State v. Hafiz Muhammad Akmal.
Murder Reference No. 11 of 2021
Haji Musheer Ahmad and three others v. The State and another.
Criminal Appeal No. 294 of 2021
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC9472.pdf

Facts: The learned Trial Court submitted the murder reference under section 374 Cr.P.C seeking the confirmation or otherwise of the sentence of death awarded to the one of the convicts in case FIR registered under sections 302, 324,148 and 149 P.P.C. and feeling aggrieved, appellants lodged the Criminal appeal assailing their convictions and sentences.

Issue: i) Whether recovery of the weapon of offence made in clear violation of section 103 of the Code of Criminal Procedure, 1898 has any evidentiary value in the eyes of the law?
ii) What is meant by an attempt to commit a crime?
iii) How it can be determined whether an attempt to commit a crime had been made or not?
iv) Whether non-proof of the alleged motive by the prosecution can be considered a mitigating circumstance in favour of the accused?

Analysis: i) With regard to the recovery of the Pistol made from the appellant, it is observed that the said recovery of the weapon has no evidentiary value in the eyes of the law as the same was made in clear violation of section 103 of the Code of Criminal Procedure, 1898. The recovery of the Pistol made from the appellant cannot be used as incriminating evidence against the appellant, being evidence which was attained through illegal means and hence hit by the exclusionary rule of evidence. Section 103 of the Code of Criminal Procedure, 1898 is of vital significance to render search proceedings both transparent and creditable. The provisions of this section, unfortunately, are honoured more in disuse than compliance.
ii) An attempt as an indictable crime means an intentional act with a view to attaining a definite end but which is not achieved because of a circumstance, independent of the will of the offender, who makes the attempt. Attempt to commit a crime is an inchoate crime. The intention coupled with some overt act to achieve that intention amounts to crime as it is an attempt to commit a crime. An

attempt is known as preliminary crime or inchoate crime as it is something which is not yet complete.

iii) There are certain tests for determining whether an attempt to commit a crime had been made or not. *Proximity test* measures the accused's progress by examining how close the accused was to completing the offence. The proximity rule requires that the amount left to be done, not what has already been done, that is to be analyzed for determining whether any attempt had been made for committing a crime. *Res ipsa loquitur* means the thing speaks for itself. To determine whether any attempt was made to commit a crime, the facts themselves can be examined and taken as proof of whether any attempt was made or not. The term *Locus Poenitentiae* means that a person cannot be charged for an attempt if he is in position to give up or abandon his plan out of his own accord after the formation of mens rea and does that. Such intentional withdrawal prior to the commission or attempt to commit the act will be termed as mere preparation for the commission of the crime and no legal liability will be imposed.

iv) It has been held in a number of judgments of the august Supreme Court of Pakistan that if a specific motive has been alleged by the prosecution, then it is duty of the prosecution to establish the said motive through cogent and confidence inspiring evidence and non-proof of motive may be considered a mitigating circumstance in favour of the accused. The august Supreme Court of Pakistan has held in the case of "Mst. Nazia Anwar v. The State and others" (2018 SCMR 911), while considering the penalty for an act of commission of Qatl-i-amd, as under :-
"In these circumstances it is quite obvious to me that the motive asserted by the prosecution had remained utterly unproved. The law is settled by now that if the prosecution asserts a motive but fails to prove the same then such failure on the part of the prosecution may react against a sentence of death passed against a convict on the charge of murder."

Conclusion: i) The recovery of the weapon of offence made in clear violation of section 103 of the Code of Criminal Procedure, 1898 has no evidentiary value in the eyes of the law.

ii) An attempt to commit a crime means an intentional act with a view to attaining a definite end but which is not achieved because of a circumstance, independent of the will of the offender, who makes the attempt.

iii) There are certain tests for determining whether an attempt to commit a crime had been made or not which are *Proximity test*, *Res ipsa loquitur* and *Locus Poenitentiae.*

iv) Non-proof of the alleged motive by the prosecution can be considered a mitigating circumstance in favour of the accused.

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51. **Lahore High Court**
The State v. Allah Diwaya etc.
Murder Reference No. 09 of 2020
Allah Diwaya and another v. The State and another.
Criminal Appeal No. 181 of 2020
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC9398.pdf

Facts: Convicts were tried along with the co-accused of the convicts, by the learned Additional Sessions Judge, in case F.I.R registered in respect of offences under sections 302, 337- L(2) and 34 P.P.C. for committing the Qatl-i-Amd. The learned trial court convicted and sentenced them. Feeling aggrieved, convicts lodged Criminal Appeal assailing their convictions and sentences. The learned trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentences of death awarded to the appellants.

Issues: i) Whether injuries of P.W are only indication of his presence at the spot and are not affirmative proof of his credibility and truth?
ii) Whether the evidence of the prosecution witnesses which has been disbelieved qua the acquitted co-accused of a convict can be believed against the convict?
iii) Whether the evidence of the recoveries can be used as incriminating evidence which was obtained through illegal means?
iv) Whether motive is only a corroborative piece of evidence?
v) Whether onus to prove the facts in issue never shifts and always lies on the prosecution?
vi) Whether benefit of doubt arising out of a single circumstance can be extended to accused?

Analysis: i) The stamp of injuries on the person of a witness may be proof of his presence at the place of occurrence, at the time of occurrence, however the same can never guarantee a truthful deposition. Injuries statedly received by a witness during an incident do not warrant acceptance of his evidence without scrutiny. At the most, such traumas can be taken as an indication of his presence on the spot, but still his evidence is to be scrutinized on the benchmark of principles laid down for the appraisal of evidence. It is not a given that a witness who suffered injuries during the occurrence will depose nothing but the truth. Even otherwise, it is not a simple presence of a witness at the crime scene but his credibility, which makes him a reliable witness. It has been held by the august Supreme Court of Pakistan repeatedly that the facts which an injured witness narrates are not to be implicitly accepted rather, they are to be attested and appraised on the principles applied for the appreciation of evidence of any prosecution witness regardless of him being injured or not.
ii) The proposition of law in Criminal Administration of Justice, that a common set of witnesses can be used for recording acquittal and conviction against the

accused persons who were charged for the commission of same offence, is now a settled proposition. The august Supreme Court of Pakistan has repeatedly held that partial truth cannot be allowed and perjury is a serious crime. This view stems from the notion that once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that the said witness will declare the truth about any other aspect of the case. We have noted that the view should be that "the testimony of one detected in a lie was wholly worthless and must of necessity be rejected." If a witness is not coming out with the whole truth, then his evidence is liable to be discarded as a whole meaning thereby that his evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case. This proposition is enshrined in the maxim falsus in uno falsus in omnibus.

iii) The Investigating Officer of the case did not join any witness of the locality during the recovery (…) which action of his was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898 and therefore the evidence of the recoveries cannot be used as incriminating evidence against the appellant, being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence. The provisions of section 103 Code of Criminal Procedure, 1898, unfortunately, are honoured more in disuse than compliance.

iv) It is an admitted rule of appreciation of evidence that motive is only a corroborative piece of evidence and if the ocular account is found to be unreliable, then motive alone cannot be made the basis of conviction. Even otherwise, a tainted piece of evidence cannot corroborate another tainted piece of evidence.

v) Suffice it to observe that the onus to prove the facts in issue never shifts and always lies on the prosecution. That the law is quite settled by now that if the prosecution fails to prove its case against an accused person then the accused person is to be acquitted even if he had taken a plea and had thereby admitted killing the deceased.

vi) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) The injuries on the person of a witness may be proof of his presence at the place of occurrence, at the time of occurrence, however the same can never guarantee a truthful deposition.

ii) If a witness is not coming out with the whole truth, then his evidence is liable to be discarded as a whole meaning thereby that his evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case. This proposition is enshrined in the maxim falsus in uno falsus in omnibus.

iii) The evidence of the recoveries cannot be used as incriminating evidence, which was obtained through illegal means and hence hit by the exclusionary rule of evidence.

iv) Yes, the motive is only a corroborative piece of evidence and if the ocular account is found to be unreliable, then motive alone cannot be made the basis of conviction.
v) If the prosecution fails to prove its case against an accused person then the accused person is to be acquitted even if he had admitted the occurrence.
vi)The benefit of doubt must be extended to an accused not as a matter of concession but as of right.

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52. **Lahore High Court**
The State v. Muhammad Shahbaz.
Murder Reference No. 09 of 2021
Muhammad Shahbaz v. The State and another.
Crl. Appeal No. 254 of 2021
Muhammad Shakir v. The State and another.
Criminal Appeal No. 729-J of 2017
Muhammad Rafique v. The State and two others.
Criminal Appeal No.36 of 2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC1679.pdf

Facts: The appellants/convicts filed respective criminal appeals against their convictions and sentences and the learned trial court transmitted murder reference for confirmation or otherwise of death sentence of the first appellant being originated from the same judgment. The complainant of the case also filed Criminal Appeal against the acquittal of the co-accused from the charge under section 302 P.P.C.

Issues: i) Whether presence of injuries stamp a witness to be a truthful one?
ii) Whether delay in recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value?
iii) Whether courts are allowed by law to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events?
iv) What will be the effect where the motivation was against the complainant or witness and the accused did not cause any harm to him?
v) Whether recovery of case property in violation of the provisions of the section 103 Code of Criminal Procedure, 1898 can be used as incriminating evidence?
vi) Whether motive alone can be made the basis of conviction?
vii)Whether a single circumstance creating reasonable doubt is sufficient to extend benefit to an accused as matter of right?

Analysis: i) It is not a given that a witness who suffered injuries during the occurrence will depose nothing but the truth. Even otherwise, it is not a simple presence of a witness at the crime scene but his credibility, which makes him a reliable witness. the facts which an injured witness narrates are not to be implicitly accepted rather, they are to be attested and appraised on the principles applied for the appreciation of evidence of any prosecution witness regardless of him being injured or not.

ii) It is trite that the delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value to nothing unless there is plausible explanation for such delay.
iii) Article 129 of the Qanun-e-Shahadat Order, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case.
iv) In a scenario where the motivation was against the complainant or the witnesses but the accused did not cause any harm to them, notwithstanding being within the range of their firing, would reveal that the said witnesses had not witnessed the occurrence.
v) When Investigating Officer of the case did not join any witness of the locality during the recovery of case property than action of his was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898 and therefore the evidence of the recovery cannot be used as incriminating evidence against the accused person being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence. The provisions of section 103 Code of Criminal Procedure, 1898, unfortunately, are honoured more in disuse than compliance…
vi) It is an admitted rule of appreciation of evidence that motive is only a corroborative piece of evidence and if the ocular account is found to be unreliable, then motive alone cannot be made the basis of conviction. Even otherwise, a tainted piece of evidence cannot corroborate another tainted piece of evidence.
vii) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) Presence of injuries does not stamp a witness to be a truthful one.
ii) Yes, delay in recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value.
iii) Yes, courts are allowed by law to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events under Article 129 of the Qanun-e-Shahadat Order, 1984.
iv) Where the motivation was against the complainant or witness and the accused did not cause any harm to him than it would reveal that the said witnesses had not witnessed the occurrence.
v) Recovery of case property in violation of the provisions of the section 103 Code of Criminal Procedure, 1898 cannot be used as incriminating evidence.
vi) Motive alone cannot be made the basis of conviction.
vii) Yes, a single circumstance creating reasonable doubt is sufficient to extend benefit to an accused as matter of right.

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53. **Lahore High Court**
The State etc. v. Mahnaz Ali etc.
Murder Reference No. 06 of 2022 etc.
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC1641.pdf

Facts: Three accused were tried together in respect of offences under Sections 302 and 34 P.P.C., for committing the Qatl-i-Amd of deceased. The learned trial court, convicted one accused and the co-accused of the convict were acquitted by the learned trial court. The learned trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant.

Issues: i) Who are the chance witnesses and whether they are duty bound to prove their presence by producing some physical proof of the same?
ii) Whether the conduct of closely related witnesses that he would be watching the proceedings as mere spectators for as long as the occurrence continued falls under the ambit of common course of natural events and human conduct as provided under Article 129 of the Qanun-e-Shahadat, 1984?
iii) What inference is drawn against the prosecution when written application is neither prompt nor spontaneous?
iv) What does the delay in reporting the matter to the police evidence?
v) What does the delay in the post-mortem examination reflect?
vi) Whether the accused could be convicted merely on the basis of a presumption that since the murder of a person has taken place in his house, therefore, he must have committed that murder?
vii) On whom the burden to prove the guilt of the accused beyond doubt lies and when the burden is shifted upon the accused?
viii) When the benefit of doubt is extended in favor of an accused?

Analysis: i) The eye witnesses who are residents of some other houses and are not the inmates of the house wherein the occurrence has taken place are therefore the chance witnesses and declared not worthy of reliance. “Chance witnesses” are under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence and were also under a duty to prove their presence by producing some physical proof of the same.
ii) No person having ordinary prudence would believe that such closely related witnesses would remain watching the proceedings as mere spectators for as long as the occurrence continued without doing anything to rescue the deceased or to apprehend the assailant. Such behavior, on the part of the witnesses, runs counter to natural human conduct and behavior. Article 129 of the Qanun-e-Shahadat, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case.
iii) The written application which is neither prompt nor spontaneous nor natural, rather a contrived, manufactured and a compromised document. Sufficient doubts

have arisen and inference against the prosecution has to be drawn in this regard.
iv) The delay in reporting the matter to the police and the failure of the prosecution witnesses to proceed to the Police Station evidences their absence at the time of occurrence, at the place of occurrence.
v) It has been repeatedly held by the august Supreme Court of Pakistan that delay in the post-mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.
vi) The prosecution is bound to prove its case against an accused person beyond a reasonable doubt at all stages of a criminal case and in a case where the prosecution asserts the presence of some eye-witnesses and such claim of the prosecution is not established by it, there the accused person could not be convicted merely on the basis of a presumption that since the murder of a person has taken place in his house, therefore, it must be he and none else who would have committed that murder.
vii) The law on the burden of proof, as provided in Article 117 of the Qanune-Shahadat, 1984, mandates the prosecution to prove, and that too, beyond any doubt, the guilt of the accused for the commission of the crime for which he is charged. On a conceptual plain, Article 117 of the Qanun-e-Shahadat, 1984 enshrines the foundational principle of our criminal justice system, whereby the accused is presumed to be innocent unless proved otherwise. Accordingly, the burden is placed on the prosecution to prove beyond doubt the guilt of the accused, which burden can never be shifted to the accused, unless the legislature by express terms commands otherwise. It is only when the prosecution is able to discharge the burden of proof by establishing the elements of the offence, which are sufficient to bring home the guilt of the accused then, the burden is shifted upon the accused, inter alia, under Article 122 of the Qanun-e-Shahadat, 1984, to produce evidence of facts, which are especially in his exclusive knowledge, and practically impossible for the prosecution to prove, to avoid conviction. Then, the burden is on the accused not to prove his innocence, but only to produce evidence enough to create doubts in the prosecution's case.
viii) It is a settled principle of law that for giving the benefit of the doubt, it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) The eye witnesses who are residents of some other houses and are not the inmates of the house wherein the occurrence has taken place are thus, chance witnesses. Chance witnesses are duty bound to prove their presence by producing some physical proof of the same.
ii) The conduct of closely related witnesses that he would be watching the proceedings as mere spectators for as long as the occurrence continued does not fall under the ambit of common course of natural events and human conduct as

provided under Article 129 of the Qanun-e-Shahadat, 1984.
iii) Doubtful inference is drawn against the prosecution when written application is neither prompt nor spontaneous.
iv) The delay in reporting the matter to the police evidences the absence of the witnesses at the time of occurrence, at the place of occurrence.
v) The delay in the post-mortem examination reflects the absence of witnesses from the place of occurrence.
vi) No, the accused could not be convicted merely on the basis of a presumption that since the murder of a person has taken place in his house, therefore, he must have committed that murder.
vii) The burden to prove the guilt of the accused beyond doubt mandatorily lies on the prosecution and can never be shifted to the accused. However, when the prosecution is able to discharge the burden of proof by establishing the elements of the offence burden is on the accused not to prove his innocence, but only to produce evidence enough to create doubts in the prosecution's case.
viii) Only a single circumstance creating reasonable doubt in the mind of a prudent person is sufficient to extend the benefit of doubt in favor of an accused.

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54. **Lahore High Court**
The State v. Muhammad Sharif.
Murder Reference No. 45/2018,
Muhammad Sharif v. The State and another.
Criminal appeal No.282/2018
Shahid Bashir v. The State and 2 others.
Criminal appeal No. 580/2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC9283.pdf

Facts: Trial in case, pertaining offences of murder etc., eventuated in awarding death sentence to convict and acquittal of his co-accused, feeling aggrieved, convict lodged Criminal Appeal assailing his conviction & sentence and the learned trial court submitted Murder Reference seeking confirmation or otherwise of said death sentence as well as the complainant filed Criminal Appeal against the acquittal of the co-accused.

Issues: i) What would be revealed in a scenario involving the motivation of assailants against the complainant/witness who did not sustain harm despite of being within the range of firing of assailants at the time of occurrence?
ii) What would be effect of the failure of the prosecution to prove the availability of light source at the place & time of occurrence?
iii) What is the effect of delayed conduct of the post-mortem examination of deceased on conclusion of a murder case?
iv) What would be evidentiary value of recovery of the Kalashnikov rifle & live bullets if such recovery is made in violation of S.103 of the Code of Criminal Procedure, 1898 coupled with situation that said recovered articles were not sent for forensic examinations?

v) If altercation of convict had taken place with complainant having not resulted in any harm during occurrence, then what would be status of motive alleged against convict to commit the *Qatl-i- Amd* of the deceased?
vi) Whether mere abscondence of an accused can be read in isolation against him?
vii) Whether the suggestions of counsel for accused put to prosecution witness during cross-examination may be used to substantiate the prosecution case?
viii) Whether mere medical evidence may be used to recognize a culprit in case of an unobserved incidence?

Analysis: i) In the midst of firing by as many as six accused persons, the complainant did not receive even a single scratch on his body during the whole occurrence. If the complainant had been present in the view of the assailants, then he would not have been spared. Blessing the complainant, the person with whom the assailants had a direct dispute with, is implausible and opposed to the natural behaviour of any accused with such an incredible consideration and showing him such favour.
ii) The electric bulbs allegedly available and lit at the place & time of occurrence, enabling the witnesses to rightly identify the accused with their individual roles at night time, were neither produced to the Investigating Officer nor did the Investigating Officer take same into possession at the time of his visit to the place of occurrence. The absence of any light source has put the whole prosecution case in dark. Hence, identification of assailants by prosecution witnesses cannot be relied upon.
iii) The inordinate, unexplained and substantial delay in the post-mortem examination of the dead body clearly establishes that the witnesses, claiming to have seen the occurrence, were not present at the time of occurrence and the delay in the post-mortem examinations was used to procure their attendance as well as to formulate a dishonest account of the occurrence after consultation & planning.
(iv) Action of the Investigating Officer for not joining any witness of the locality during recovery of the Kalashnikov rifle & live bullets was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898, leaving such recovery obtained through illegal means hit by the exclusionary rule of evidence. Moreover, the recovered Kalashnikov rifle & live bullets were never sent to the office of the Punjab Forensic Science Agency, Lahore for their comparison with the empties collected from the place of occurrence. Even no report of the Punjab Forensic Science Agency, Lahore was brought on record to suggest that the recovered Kalashnikov rifle & five bullets were in working condition.
v) The convict had no proved motive to commit the *Qatl-i- Amd* of the deceased, rather his altercation had allegedly taken place with the complainant. Had the motive been true, then the complainant would not have been let off without any injury. There is an evocative muteness in the prosecution case with regard to the minutiae of the motive alleged.
vi) The fact of abscondence of an accused can only be used as a corroborative piece of evidence.

vii) The onus to prove the facts in issue never shifts and always lies on the prosecution. The law is quite settled by now that if the prosecution fails to prove its case against an accused person, then the accused person is to be acquitted even if he had taken a plea and had thereby admitted killing the deceased. The suggestions as put by the learned counsel representing the accused, hardly provide any substantiation to the prosecution case.
viii) If the only piece of evidence left to be considered was the medical evidence with regard to the injuries on the dead body of the deceased observed by Doctor concerned, same is of no assistance.

Conclusion: i) If the motivation of assailants was against the complainant/witness, having not been caused any harm despite of being within the firing range of assailants at the time of occurrence, it would reveal that the said complainant/witness had not witnessed the occurrence.
ii) The failure of the prosecution to prove the availability of any light source at the place & time of occurrence has repercussions, entailing the failure of the prosecution case.
iii) Delay in conducting post-mortem of deceased is reflective of the absence of witnesses at place & time of occurrence and the sole purpose of such delay is to procure the presence of witnesses for advancing a false narrative to involve any person.
iv) The recovery of the Kalashnikov rifle & live bullets, if effected in violation to S.103 of the Code of Criminal Procedure, 1898 followed by not sending said recovered articles for forensic examinations, does not prove any fact in issue or relevant fact.
v) If altercation of convict had taken place with complainant who had not sustained any harm during occurrence, then motive alleged against convict to commit the *Qatl-i- Amd* of the deceased would stand not proved.
vi) Mere abscondence of an accused cannot be read in isolation, but it has to be read along with the substantive piece of evidence.
vii) The suggestions of counsel for accused put to prosecution witness during cross-examination may hardly provide any substantiation to the prosecution case as burden to prove fact in issue lies on prosecution.
viii) Medical evidence, by its nature and character, cannot recognize a culprit in case of an unobserved incidence.

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55. **Lahore High Court**
The State v. Jan Muhammad alias Jani and Shah Dost (since dead).
Murder Reference No. 126 of 2019
Jan Muhammad alias Jani v. The State.
Criminal Appeal No. 817-J of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC9247.pdf

Facts: The appellant/convict was tried along with co-accused (since dead) in the case instituted upon a private complaint in respect of offences under sections 302, 460 and 34 P.P.C. The learned trial court sentenced the appellant with death under section 302(b) P.P.C. as *Tazir.* On the other hand the trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant.

Issues: i) Whether the failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence is fatal to the prosecution case?
ii) What is meant by *Rigor Mortis*?
iii) Whether an inordinate and unexplained and substantial delay in the post-mortem examination of the dead body creates doubts regarding the presence of eye witnesses at the time of occurrence?
iv) Whether the evidence of the prosecution witnesses which has been disbelieved qua the acquitted co-accused can be believed against other accused?
v) Whether motive and recovery have any evidentiary value if ocular account is found to be unreliable?
vi) Whether for giving the benefit of the doubt to an accused it is necessary that there should be so many circumstances creating doubts?

Analysis: i) The absence of any light source has put the whole prosecution case in the dark. It was admitted by the witnesses themselves that it was a dark night and they had used the light of an electric bulb, never produced, to identify the assailants during the occurrence and as the prosecution witnesses failed to prove the availability of such a light source, their statements with regard to them identifying the assailants cannot be relied upon. The failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence has repercussions, entailing the failure of the prosecution case.
ii) *Rigor Mortis* is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death. It starts within 2 to 4 hours of death and fully develops in about 12-hours in temperate climate. Similarly, the reverse process with which *rigor mortis* disappears is called *algor mortis*.
(iii) The inordinate and unexplained and substantial delay in the post-mortem examination of the dead body clearly establishes that the witnesses claiming to have seen the occurrence or having seen the appellant escaping from the place of occurrence had not seen the occurrence and were not present at the time of occurrence and the delay in the post-mortem examination was used to procure their attendance and formulate a dishonest account of the occurrence, after consultation and planning. It has been repeatedly held by the august Supreme Court of Pakistan that such delay in the post-mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.
(iv) The proposition of law in Criminal Administration of Justice, that a common

set of witnesses can be used for recording acquittal and conviction against the accused persons who were charged for the commission of the same offence, is now a settled proposition. The august Supreme Court of Pakistan has held that partial truth cannot be allowed and perjury is a serious crime. This view stems from the notion that once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that the said witness will declare the truth about any other aspect of the case. We have noted that the view should be that "*the testimony of one detected in a lie was wholly worthless and must of necessity be rejected."* If a witness is not coming out with the whole truth, then his evidence is liable to be discarded as a whole, meaning thereby that his evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case.

(v) It is an admitted rule of appreciation of evidence that motive and recovery are only corroborative pieces of evidence and if the ocular account is found to be unreliable, then motive and recovery have no evidentiary value and lost their significance.

(vi) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) The failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence is fatal to the prosecution case.

ii) *Rigor Mortis* is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death.

iii) An inordinate and unexplained and substantial delay in the post-mortem examination of the dead body creates doubts regarding the presence of eye witnesses at the time of occurrence.

iv) The evidence of the prosecution witnesses which has been disbelieved qua the acquitted co-accused cannot be believed against other accused.

v) If the ocular account is found to be unreliable, then motive and recovery have no evidentiary value and lost their significance.

vi) For giving the benefit of the doubt to an accused it is not necessary that there should be so many circumstances rather a single circumstance creating reasonable doubt in the mind of a prudent person is sufficient.

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56. **Lahore High Court**
Malik Waseem ur Rehman v. The Province of Punjab through Deputy Commissioner/ Head of District Administration, Rahim Yar Khan and Two Others.
Intra Court Appeal No. 19 of 2023
Mr. Justice Sadiq Mahmud Khurram,Mr. Justice Muhammad Amjad Rafiq.
https://sys.lhc.gov.pk/appjudgments/2023LHC1855.pdf

Facts: The appellant was serving as Accountant in the Municipal Committee, who was proceeded under the Punjab Employees Efficiency, Discipline & Accountability Act, 2006. He was terminated from service on the basis of Inquiry Report and his representation against Inquiry was also dismissed. Then, the appellant filed an appeal before the Deputy Commissioner which was partially accepted and penalty of termination from service was converted into "compulsory retirement from service". The Municipal Committee filed another petition before the Deputy Commissioner for review of the aforesaid order, which petition was accepted. The validity and authenticity of the order by the Deputy Commissioner was assailed through the Writ Petition, which petition was dismissed, hence this Intra Court Appeal.

Issues: i)Whether the Intra Court Appeal is competent in view of the proviso to section 3 (2) of the Law Reforms Ordinance, 1972 if applicable law provides at least one appeal etc. against original order?
ii) What are the meanings of the expressions" original", "original order"and "proceedings" as used in the proviso to subsection (2) of section 3 of the Law Reforms Ordinance, 1972?

Analysis: i)The proviso to section 3 (2) of Law Reforms Ordinance, 1972 states that appeal shall not be available or competent under section 3 of the Ordinance ibid before a Division Bench of this Court if the petition brought before High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 arises out of any proceedings in which the law applicable provided for at least one appeal, one revision or one review to any Court, Tribunal or authority against the original order. This means that the relevant order may not necessarily be the one which is impugned in the writ petition, but the test is that whether the original order passed in the proceedings is subject to appeal, revision or review under the relevant law. The test is whether the original order passed in the proceedings subject to an appeal under the relevant law, irrespective of the fact whether the remedy of appeal so provided was availed of or not.
ii) August Supreme Court, while interpreting the word "original order" under proviso to section 3 (2) of the Law Reforms Ordinance, 1972, held that the expression "original order" in section 3(2) of the Ordinance, is used in generic sense in contradistinction to orders passed in appeal, revision or review. The word "original" in the context of Copyright Act, 1911, as follows: "The word "original" does not mean that the work must be the expression of original or invented thought…but that the work must not be copied from another work, that it should originate from the author." The term "proceedings" as defined in the book "Words and phrases": "The term `proceedings' is a very comprehensive term, and, generally speaking, moans a prescribed course of action for enforcing a legal right, and hence it necessarily embraces the requisite steps by which judicial action is invoked. It is the step towards the objective, to be achieved, for instance the judgment in a pending suit.

Conclusion: i) When the remedies of appeal and revision or review are available against the order of imposition of penalty by the "competent authority", which was to be treated as the original order for the purpose of section 3(2) of the Law Reforms Ordinance, 1972, then the Intra Court Appeal is not competent.

ii) The word "original" is susceptible to different meanings in the context of a particular statute. It does not always mean "first in order". Apparently the meaning of the expression "original order" is the order with which the proceedings under the relevant statute commenced.While the "proceeding" commences with the first step by which the machinery of the law is put into motion in order to take cognizance of the case.

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57. **Lahore High Court**
The State v. Muhammad Ishaq etc.
Murder Reference No. 08 of 2022
Muhammad Ishaq and four others v. The State and another.
Criminal Appeal No. 205 of 2022
Mr. Justice Sadiq Mahmud Khurram,Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC1725.pdf

Facts: The appellants (convicts) through their criminal appeal, assailing their convictions and sentences. The learned trial court submitted murder reference seeking confirmation or otherwise of the sentences of death awarded to the appellants (convicts).

Issues: i) Whether a chance witnesses is under a bounden duty to provide a convincing reason for his presence at the place of occurrence at the time of occurrence?

ii) Whether the apparent flaws in the statement of eye witnesses make the statements of eye witnesses of unworthy of any reliance?

iii) Whether the delay in reporting the matter to the police and the failure of the prosecution witnesses to proceed to the Police Station evidences their absence at the time of occurrence, at the place of occurrence?

iv) Whether the delay in the post-mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses?

v) Whether the evidence which has been disbelieved against an acquitted accused can be believed against the co-accused?

vi) Whether recovery of weapon of offence effected from accused in violation of section 103Code of Criminal Procedure, 1898 can be relied upon?

vii) Whether the safe custody of the empty shells of the bullets and cartridges collected from the place of occurrence to the police station and from the Police Station to the Punjab Forensic Science Agency is necessary to prove the recovery of firearm weapons?

viii) Whether independent evidence is required by the prosecution to prove the alleged motive?

ix) Whether a single circumstance creating reasonable doubt in the mind of a

prudent person is sufficient to extend benefit of doubt to an accused as of right?

Analysis: i) The chance witnesses are under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence and are also under a duty to prove their presence by producing some physical proof of the same…

ii) These apparent flaws in the statements of both the prosecution witnesses PW-1 and PW-2, who otherwise narrated all the complex and varied details of the occurrence, have led us to an irresistible conclusion that the statements of the witnesses are not worthy of any reliance and are to be rejected outright...

iii) The scrutiny of the statements of the prosecution witnesses reveals that the written application PW-1 was neither prompt nor spontaneous nor natural, rather was a contrived, manufactured and a compromised document. Sufficient doubts have arisen and inference against the prosecution has to be drawn in this regard and the delay in reporting the matter to the police and the failure of the prosecution witnesses to proceed to the Police Station evidences their absence at the time of occurrence, at the place of occurrence...

iv) The reason which is apparent for the delayed conducting of the post-mortem examinations of the dead bodies of the deceased and the delayed submission of police papers to the Medical Officer is that by that time the details of the occurrence were not known and the said time was used not only to procure the attendance of the witnesses but also to fashion a false narrative of the occurrence. No explanation was offered to justify the said delay in receiving the complete documents from the police and the delay in conducting the post-mortem examinations. These facts clearly establish that the witnesses claiming to have seen the occurrence were not present at the time of occurrence and the delay in the post-mortem examination was used to procure their attendance and formulate a dishonest account, after consultation and planning. It has been repeatedly held by the august Supreme Court of Pakistan that such delay in the post-mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.

v) The question for determination before this Court now is that whether the evidence which has been disbelieved qua the acquitted co accused of the appellants can be believed against the appellants. The proposition of law in Criminal Administration of Justice, that a common set of witnesses can be used for recording acquittal and conviction against the accused persons who were charged for the commission of same offence, is now a settled proposition. The august Supreme Court of Pakistan has repeatedly held that partial truth cannot be allowed and perjury is a serious crime. This view stems from the notion that once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that the said witness will declare the truth about any other aspect of the case. We have noted that the view should be that "the testimony of one detected in a lie was wholly worthless and must of necessity be rejected." If a

witness is not coming out with the whole truth, then his evidence is liable to be discarded as a whole meaning thereby that his evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case.
vi) The recovery of weapons cannot be relied upon as the Investigating Officer of the case did not join any witness of the locality during the recovery of weapons, which action of his was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898 and therefore the evidence of the recovery of weapons cannot be used as incriminating evidence against the appellants, being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence...
vii) The safe custody and safe transmission of the empty shells of the bullets and cartridges collected from the place of occurrence to the police station and from the Police Station to the Punjab Forensic Science Agency, could not be proved. In this manner, the recovery of weapons could not be proved and cannot be considered as a relevant fact for proving any fact in issue...
viii) No independent witness was produced by the prosecution to prove the motive as alleged. Even otherwise a tainted piece of evidence cannot corroborate another tainted piece of evidence.
ix) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) A chance witnesses is under a bounden duty to provide a convincing reason for his presence at the place of occurrence at the time of occurrence.
ii) The apparent flaws in the statement of eye witnesses make the statements of eye witnesses of unworthy of any reliance.
iii) The delay in reporting the matter to the police and the failure of the prosecution witnesses to proceed to the Police Station evidences their absence at the time of occurrence, at the place of occurrence.
iv) The delay in the post-mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses.
v) The evidence which has been disbelieved against an acquitted accused cannot be believed against the co-accused.
vi) Recovery of weapon of offence effected from accused in violation of section 103Code of Criminal Procedure, 1898 cannot be relied upon.
vii) The safe custody of the empty shells of the bullets and cartridges collected from the place of occurrence to the police station and from the Police Station to the Punjab Forensic Science Agency is necessary to prove the recovery of firearm weapons.
viii) Independent evidence is required by the prosecution to prove the alleged motive.

ix) A single circumstance creating reasonable doubt in the mind of a prudent person is sufficient to extend benefit of doubt to an accused as of right.

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58. **Lahore High Court**
The State v. Rashid etc.
Murder Reference No. 95 of 2019
Rashid and another v. The State and another.
Criminal Appeal No. 725 of 2019
Sohail Aslam v. The State and two others.
Criminal Appeal No.839 of 2019
Mr. Justice Sadiq Mahmud Khurram,Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC9172.pdf

Facts: The appellants (convicts) through their criminal appeal, assailing their convictions and sentences. The learned trial court submitted murder reference seeking confirmation or otherwise of the sentences of death awarded to the appellants (convicts). The complainant of the case also filed criminal appeal against the acquittal of the co-accused persons.

Issues: i) Whether failure to prove the presence of eye witnesses at the place of occurrence vitiates the trust of court in the eye witnesses?
ii) Whether the failure of the prosecution to prove the presence of any source of light and also lit at the place of occurrence has condemnatory consequences for the prosecution?
iii) What is the meaning of the term rigor mortis?
iv) Whether the inordinate and unexplained and substantial delay in the post-mortem examination is reflective of the absence of witnesses?
v) Whether the recovery effected in violation of the provisions of the section 103 Code of Criminal Procedure, 1898 can be used as incriminating evidence against the accused?
vi) Whether the report of Punjab Forensic Science Agency regarding empty shells of the bullets taken into possession from the place of occurrence sent to Punjab Forensic Science Agency with delay and after the arrest of accused has any evidentiary value?
vii) If the ocular account is found to be unreliable, whether motive and recovery have any evidentiary value?
viii) Where all the other pieces of evidence relied upon by the prosecution have been disbelieved and discarded, whether the conviction can be upheld on the basis of medical evidence alone?
ix) Whether a single circumstance creating reasonable doubt in the mind of a prudent person is sufficient to extend benefit of doubt to an accused as of right?
x) Once an acquittal is recorded in favour of accused, whether the courts competent to interfere in the acquittal order should be slow in converting the same into conviction?

Analysis: i) The prosecution was under a bounden duty to establish that the occurrence had

indeed taken place when the prosecution witnesses had arrived at the place of occurrence and the failure to prove any reason for the prosecution witnesses, to have proceeded from their houses to the place of occurrence and their presence at the place of occurrence has vitiated our trust in the prosecution witnesses...
ii) The failure of the prosecution to prove the presence of any source of light and also lit at the place of occurrence has condemnatory consequences for the prosecution.
iii) Rigor mortis is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death. It starts within 2 to 4 hours of death and fully develops in about 12-hours in temperate climate.
iv) The inordinate and unexplained and substantial delay in the post-mortem examinations of the dead bodies and submission of the police papers to the Medical Officer clearly establishes that the witnesses claiming to have seen the occurrence or having seen the appellants escaping from the place of occurrence had not seen the occurrence and were not present at the time of occurrence and the delay in the post-mortem examinations was used to procure their attendance and formulate a dishonest account of the occurrence, after consultation and planning. It has been repeatedly held by the august Supreme Court of Pakistan that such delay in the post-mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.
v) The recovery of the pistol and two live bullets from the appellant and the recoveries of the motorcycle and the pistol and two live bullets from the appellant cannot be relied upon as the Investigating Officer of the case did not join any witness of the locality during the said recoveries, which action of her was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898 and therefore the evidence of the recoveries cannot be used as incriminating evidence against the appellants, being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence...
vi) The empty shells of the bullets taken into possession from the place of occurrence were sent to Punjab Forensic Science Agency on 06.10.2016 when there was no reason for keeping the empty shells, which were taken into possession on 11.09.2016, at the Police Station and not sending them to the office of Punjab Forensic Science Agency, Lahore till after the appellants had been arrested. In this manner the said report of Punjab Forensic Science Agency, has no evidentiary value as the possibility of fabrication is apparent...
vii) It is an admitted rule of appreciation of evidence that motive and recovery are only corroborative pieces of evidence and if the ocular account is found to be unreliable, then motive and recovery have no evidentiary value and lost their significance.
viii) As all the other pieces of evidence relied upon by the prosecution, in this case, have been disbelieved and discarded by us, therefore, the appellants' conviction cannot be upheld on the basis of medical evidence alone.
ix) It is a settled principle of law that for giving the benefit of the doubt it is not

necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

x) It is important to note that according to the established principle of the criminal administration of justice once an acquittal is recorded in favour of accused facing criminal charge he enjoys double presumption of innocence, therefore, the courts competent to interfere in the acquittal order should be slow in converting the same into conviction, unless and until the said order is patently illegal, shocking, based on misreading and non-reading of the record or perverse.

Conclusion: i) Failure to prove the presence of eye witnesses at the place of occurrence vitiates the trust of court in the eye witnesses.

ii) Failure of the prosecution to prove the presence of any source of light and also lit at the place of occurrence has condemnatory consequences for the prosecution.

iii) Rigor mortis is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death.

iv) The inordinate and unexplained and substantial delay in the post-mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.

v) The recovery effected in violation of the provisions of the section 103 Code of Criminal Procedure, 1898 cannot be used as incriminating evidence against the accused being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence.

vi) The report of Punjab Forensic Science Agency regarding empty shells of the bullets taken into possession from the place of occurrence sent to Punjab Forensic Science Agency with delay and after the arrest of accused has no evidentiary value.

vii) If the ocular account is found to be unreliable, motive and recovery have no evidentiary value.

viii) Where all the other pieces of evidence relied upon by the prosecution have been disbelieved and discarded, the conviction cannot be upheld on the basis of medical evidence alone.

ix) A single circumstance creating reasonable doubt in the mind of a prudent person is sufficient to extend benefit of doubt to an accused as of right.

x) Once an acquittal is recorded in favour of accused, the courts competent to interfere in the acquittal order should be slow in converting the same into conviction unless and until the said order is patently illegal, shocking, based on misreading and non-reading of the record or perverse.

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59. **Lahore High Court**
The State v. Khuda Bakhsh.
Murder Reference No. 08 of 2021
Khuda Bakhsh and another v. The State and another.
Criminal Appeal No. 244 of 2021
The State v. Muhammad Zafar Iqbal.
Criminal Revision No. 166 of 2021
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC2002.pdf

Facts: The learned Trial Court submitted the Murder Reference under section 374 Cr.P.C seeking the confirmation or otherwise of the sentence of death awarded to the one of the convicts in case FIR registered under sections 302 and 34 P.P.C. and feeling aggrieved, appellants lodged the Criminal appeal assailing their convictions and sentences and the State also filed Criminal Revision seeking the enhancement of the sentence of the other convict.

Issue: i) Whether the delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 has any value?
ii) What does the inordinate delay in reporting the matter to the police have effect on the case of prosecution?
iii) What is the scope and concept of Dying Declaration?
iv) What is the procedure and parameters for recording Dying declaration?
v) Whether the contradictions in the ocular account of the occurrence and the medical evidence have any effect on the case of the prosecution?

Analysis: i) It is trite that the delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value to nothing unless there is plausible explanation for such delay. The august Supreme Court of Pakistan in the case of "Abdul Khaliq Vs. The State" (1996 SCMR 1553) has held as under: "It is a settled position of law that late recording of 161, Cr.P.C. statement of a prosecution witness reduces its value to nill unless there is plausible explanation for such delay".
ii) This inordinate delay in reporting the matter conclusively proves that the written application submitted by PW-5 and the formal F.I.R were prepared after probe, consultation, planning, investigation and discussion. As many as three days and twelve hours were taken to invent a false and dishonest narrative of the written application of PW-5. The scrutiny of the statements of the prosecution witnesses reveals that the written application of PW-5 was neither prompt nor spontaneous nor natural, rather was a contrived, manufactured and a compromised document. Sufficient doubts have arisen and inference against the prosecution has to be drawn in this regard and the delay in reporting the matter to the police and the failure of the prosecution witnesses to proceed to the Police Station evidences their absence at the time of occurrence, at the place of occurrence.
iii) Dying declaration, generally, stands for the statement of a person who is in

expectation of his death and relates to the causes of his death. Such a statement is admissible in evidence though its maker does not appear in the witness box so as to provide an opportunity of cross-examination to an accused facing the charge of his murder. The admissibility of the dying declaration is an exception to the general rule which makes inadmissible the hearsay evidence. Dying declaration can be made basis for awarding conviction provided it is free from the menace of prompting and tutoring and is proved to have been made by none other than the deceased himself. The paramount reason of attaching importance and credibility to such a statement is the presumption that a dying person seldom lies.

iv) For recording of dying declaration no hard and fast rules are laid down, however, a wade through the provisions of the Police Rules, 1934 reveals that a procedure and brief guidelines are provided in chapter-25, Rule 21. From where, it can be gathered that preferably such a statement is to be recorded either by a Magistrate or in the presence of a gazetted police officer and in absence thereof in front of two or more unconcerned reliable witnesses. However, if neither of the above mentioned persons are available, only then such a statement can be recorded in the presence of two or more police officers.

v) The contradictions in the ocular account of the occurrence and the medical evidence clearly establish that the prosecution miserably failed to prove the charge against the appellants and such contradictions sound the death knell for the prosecution case and prove to be the cause of its sad demise. Had the witnesses seen the occurrence then there did not exist any possibility that they would fallen into error.

Conclusion: i) The delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value to nothing unless there is plausible explanation for such delay.

ii) The inordinate delay in reporting the matter conclusively proves that the formal F.I.R was prepared after probe, consultation, planning, investigation and discussion and sufficient doubts have arisen and inference against the prosecution has to be drawn in this regard

iii) Dying declaration, generally, stands for the statement of a person who is in expectation of his death and relates to the causes of his death. The paramount reason of attaching importance and credibility to such a statement is the presumption that a dying person seldom lies.

iv) For recording of Dying Declaration no hard and fast rules are laid down, however, preferably such a statement is to be recorded either by a Magistrate or in the presence of a gazetted police officer and in absence thereof in front of two or more unconcerned reliable witnesses.

v) The contradictions in the ocular account of the occurrence and the medical evidence clearly establish that the prosecution miserably failed to prove the charge against the accused.

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60. **Lahore High Court**
The State v. Allah Rakha.
Murder Reference No. 14 Of 2021
Allah Rakha and Another v. The State and Another.
Criminal Appeal No. 408 Of 2021
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Tariq Nadeem.
https://sys.lhc.gov.pk/appjudgments/2022LHC9328.pdf

Facts: The appellants were tried under sections 302, 452, 324, 337-F(vi), 337-L(2), 34 and 109 PPC and convicted by trial court. Feeling aggrieved from the judgment of the Trial Court, the convicts lodged this Criminal Appeal assailing their conviction and sentences, while the learned trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant.

Issues: i) When a recovery made during investigation is considered as hit by the exclusionary rule of evidence?
ii)If there is only one circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then whether the accused would be entitled to the benefit of such doubt?
iii) Whether mentioning of inmates of house as eye-witnesses in a promptly lodged F.I.R. can be assumed as result of deliberation?
iv) When an offender is absolved from sentence of death by way of *qisas,* being a minor at the time of occurrence in a case of *Qatl-i-amd*, then can the Court award him the punishment of death or imprisonment for life by way of *Tazir*?

Analysis: i)The recovery of the motorcycle from the appellant cannot be relied upon as the Investigating Officer of the case did not join any witness of the locality during the said recovery, which his action was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898 and therefore the evidence of the recovery of the motorcycle cannot be used as incriminating evidence against the appellant, being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence.
ii) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".
iii) When the eye-witnesses were inmates of the house wherein the occurrence had taken place, then they were nothing but natural witnesses and their presence at the place of incident cannot be doubted in any manner. Further, the names of the eye-witnesses could not have been mentioned in such a promptly lodged F.I.R. if they had not been with the deceased persons at the time of their death.

iv)The difference of punishment for *Qatli-amd* as *Qisas* and *Tazir* provided under sections 302(a) and 302(b) P.P.C., respectively is that in a case of *Qisas*, Court has no discretion in the matter of sentence, whereas in case of *Tazir* Court may award either of the sentence provided under section 302(b) P.P.C., and exercise of this direction in the case of sentence of *Tazir* would depend upon the facts and circumstances of the case.

Conclusion: i)When any independent witness of locality is not associated with proceedings of recovery of weapons, then the mandatory provisions of section 103, Cr.P.C. had flagrantly been violated in that regard making such recovery hit by the exclusionary rule of evidence.
ii) If there is a circumstance creating reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt not as a matter of grace and concession, but as a matter of right.
iii) Prompt recourse to law straight at the police station excludes every possibility of deliberation or consultation in nominating the inmates of house as eye-witnesses in F.I.R.
iv) When an offender is absolved from sentence of death by way of *qisas,* being a minor at the time of occurrence in a case of *Qatl-i-amd*, the Court may, keeping in view the circumstances of the case, award him the punishment of death or imprisonment for life by way of *Tazir*.

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61. **Lahore High Court**
Muhammad Aslam v. The State and Another.
Crl. Misc. No.6795-M of 2022
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC9506.pdf

Facts: Through this petition filed under section 561-A of the Code of Criminal Procedure (Cr.P.C) 1898, the petitioner has prayed that the benefit of section 382-B of Cr.P.C, 1898 may be extended to him.

Issues: i) Whether it is mandatory for a court to extend the benefit of 382-B Cr.P.C either awarding the sentence of imprisonment or converting it into imprisonment?
ii) Whether the benefit of 382-B of Cr.P.C can be extended after the disposal of a case or an appeal, when no reason for refusing such a benefit is given?

Analysis: i) Section 382-B, Cr.P.C. was added by the Law Reforms Ordinance, 1972. The word "shall" was substituted for the word "may" by the Code of Criminal Procedure (Second Amendment) Ordinance (Ordinance No. LXXI of 1979). This substitution by the word “shall” means that this provision was mandatory, and it was obligatory for the Courts to give this benefit to the accused who was awarded the sentence of imprisonment. This benefit was also available to a person who was awarded a death sentence by the trial court but subsequently the same was reduced. A legal valuable right has been conferred upon the accused after the amendment of section 382-B, Cr.P.C., and this right cannot be ignored or refused.

Needless to add that the object of granting this benefit under section 382-B Cr.P.C is to compensate the accused for the unnecessary delay that had been caused in the commencement and the conclusion of his trial. Therefore, the Courts must take into consideration the period that the accused spends in jail prior to his conviction.
ii) Admittedly, this Court while disposing of the appeal of the petitioner had not considered the aspect of withholding the benefit of section 382-B of the Code of Criminal Procedure, 1898 to the petitioner and the judgment in this behalf is silent on the point. In the case of Liaqat Hussain v. State (PLD 1995 SC 485), it was noted that the trial Court and the Federal Shariat Court had not pointed out any circumstance which would justify the denial of the extension of the benefit of section 382- B, Cr.P.C., to the appellant in the said case. Thus, while maintaining the conviction and sentences of the appellant awarded by the trial Court and affirmed by the Federal Shariat Court, the august Supreme Court of Pakistan directed that the benefit of section 382-B, Cr.P.C. would be extended to the appellant. Since this Court, while passing the judgment, did not give any reason for not extending the benefit provided under section 382-B of the Code of Criminal Procedure, 1898 to the petitioner, thus, same is extended by invoking the inherent power under section 561-A, Cr.P.C.

Conclusion: i) It is mandatory for a court to extend the benefit of section 382-B Cr.P.C of 1898 while awarding the sentence of imprisonment or converting it into imprisonment.
ii) The benefit of section 382-B PPC can be extended by a court even after the disposal of a case or an appeal unless it has been considered and denied with reasons.

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62. **Lahore High Court**
The State v. Muhammad Arslan.
Murder Reference No. 46 of 2022
Muhammad Arslan v. The State and another.
Crl. Appeal No. 584 of 2022
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC9209.pdf

Facts: The appellant filed criminal appeal against his conviction and sentence and the learned trial court transmitted murder reference for confirmation or otherwise of death sentence of the appellant being originated from the same judgment.

Issues: i) Whether a chance witness is under a bounden duty to provide a convincing reason for his presence at the place of occurrence?
ii) Whether a close relative would remain silent spectator for as long as the occurrence continued without doing anything to rescue the deceased or to apprehend the assailant?
iii) Whether delay in the post mortem examination is reflective of the absence of witnesses from the place of occurrence?
iv) Whether burden of proof lies upon prosecution to establish the guilt of the

accused for the commission of the crime for which he is charged, beyond any doubt?
v) Whether burden of proof will be shifted upon accused when the prosecution established the elements of the offence?
vi) Whether article 122 of the Qanun-e-Shahadat, 1984 can be used to undermine the well-established rule of law that the burden is on the prosecution and never shifts?
vii)Whether a single circumstance creating reasonable doubt is sufficient to extend benefit to an accused as matter of right?

Analysis: i) Chance witnesses are under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence and are also under a duty to prove their presence by producing some physical proof of the same.
ii)No person having ordinary prudence would believe that closely related witnesses would remain watching the proceedings as mere spectators for as long as the occurrence continued without doing anything to rescue the deceased or to apprehend the assailant. It only proves that the deceased was at the mercy of the assailant and no one was there to save her. Such behaviour, on the part of the witnesses, runs counter to natural human conduct and behaviour. Article 129 of the Qanun-e-Shahadat, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case.
iii) Delay in the post-mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.
iv) The law on the burden of proof, as provided in Article 117 of the Qanun-e-Shahadat, 1984, mandates the prosecution to prove, and that too, beyond any doubt, the guilt of the accused for the commission of the crime for which he is charged.On a conceptual plain, Article 117 of the Qanun-e-Shahadat, 1984 enshrines the foundational principle of our criminal justice system, whereby the accused is presumed to be innocent unless proved otherwise. Accordingly, the burden is placed on the prosecution to prove beyond doubt the guilt of the accused, which burden can never be shifted to the accused, unless the legislature by express terms commands otherwise.
v) It is only when the prosecution is able to discharge the burden of proof by establishing the elements of the offence, which are sufficient to bring home the guilt of the accused then, the burden is shifted upon the accused, inter alia, under Article 122 of the Qanun-e-Shahadat, 1984, to produce evidence of facts, which are especially in his exclusive knowledge, and practically impossible for the prosecution to prove, to avoid conviction. It has to be kept in mind that Article 122 of the Qanun-e-Shahadat, 1984 comes into play only when the prosecution has proved the guilt of the accused by producing sufficient evidence, except the

facts referred in Article 122 Qanun-e-Shahadat, 1984, leading to the inescapable conclusion that the offence was committed by the accused. Then, the burden is on the accused not to prove his innocence, but only to produce evidence enough to create doubts in the prosecution's case.

vi) In a criminal case, the burden of proof is on the prosecution and article 122 of the Qanun-e-Shahadat, 1984 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. If the article was to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. Article 122 of the Qanun-e- Shahadat, 1984 cannot be used to undermine the well-established rule of law that, save in a very exceptional class of cases, the burden is on the prosecution and never shifts.

vii) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) Yes, a chance witness is under a bounden duty to provide a convincing reason for his presence at the place of occurrence.

ii) No close relative would remain silent spectator for as long as the occurrence continued without doing anything to rescue the deceased or to apprehend the assailant.

iii) Yes, delay in the post mortem examination is reflective of the absence of witnesses from the place of occurrence.

iv) Yes, burden of proof lies upon prosecution to establish the guilt of the accused for the commission of the crime for which he is charged, beyond any doubt.

v) Yes, burden of proof will be shifted upon accused when the prosecution established the elements of the offence.

vi) Article 122 of the Qanun-e-Shahadat, 1984 cannot be used to undermine the well-established rule of law that, save in a very exceptional class of cases, the burden is on the prosecution and never shifts.

vii) Yes, a single circumstance creating reasonable doubt is sufficient to extend benefit to an accused as matter of right.

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63. **Lahore High Court**
The State v. Khateeb Hussain.
Capital Sentence Reference No.2 of 2021
Khateeb Hussain v. The State and another.
Criminal Appeal No. 43-ATA of 2021
Zafar Hussain v. The State and another.
Criminal Appeal No. 34-ATA of 202
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC1958.pdf

Facts: The learned trial court submitted Reference under section 374 Cr.P.C. read with section 30(2) of the Anti-terrorism Act, 1997 for confirmation or otherwise of the death sentences awarded to one of the appellants in case FIR registered in respect of an offence under sections 302, 353 and 109 P.P.C. and under sections 7, 11-W and 21-I of the Anti-terrorism Act, 1997 and feeling aggrieved, the appellants lodged the Criminal appeals assailing their convictions and sentences.

Issues: i) Whether it is a tradition in Pakistan that after the death, people immediately close the eyes and mouth of the deceased and what does it infer?
ii) What does the promptitude in lodging of the F.I.R proves?
iii) What does the promptitude proves in the holding of the post mortem examination of the dead body of the deceased?
iv) What is evidentiary value of video footage if investigation officer has not recorded the statement of the person who had recorded the said video footage?
v) Whether the cases of the offences specified in entry No. 4 of the Third Schedule to the Anti-terrorism Act, 1997 per se constitute the offence of terrorism?
vi) Whether only creating of sense of fear or insecurity in the society is by itself terrorism?

Analysis: i) It is correct that it is a tradition in Pakistan that after the death, people immediately close the eyes and mouth of the deceased. The closed eyes and mouth of the deceased at the time of the preparation of the inquest report proves the presence of the witnesses at the place, at the time of occurrence.
ii) The promptitude in lodging of the F.I.R. establishes the presence of the witnesses at the place of occurrence, at the time of occurrence.
iii) The promptitude in the holding of the post mortem examination of the dead body of the deceased proves that the prosecution witnesses had witnessed the occurrence and after completing all the formalities, the post mortem examination of the dead body of the deceased was conducted.
iv) If Investigating Officer of the case has admitted that he has not recorded the statement of the person who had recorded the said video footage then, in absence of that proof, the said video footage cannot be considered as admissible evidence.
v) The cases of the offences specified in entry No. 4 of the Third Schedule to the Anti-terrorism Act, 1997 are cases of those heinous offences which do not per se constitute the offence of terrorism but such cases are to be tried by an Anti-Terrorism Court because of their inclusion in the Third Schedule. In cases of

heinous offences mentioned in entry No. 4 of the said Schedule, an Anti-Terrorism Court can pass a punishment for the said offence and not for committing the offence of terrorism. Such distinction between cases of terrorism and other heinous offences by itself explains and recognizes that all heinous offences, howsoever serious, grave, brutal, gruesome, macabre or shocking, do not ipso facto constitute terrorism which is a species apart.

vi) Only creating of sense of fear or insecurity in the society is not by itself terrorism, unless the motive itself is to create fear or insecurity in the society and not when fear or insecurity is just a byproduct, a fallout or an unintended consequence of a crime and mere shock, horror, dread or disgust created or likely to be created in the society, does not transform a crime into terrorism.

Conclusion: i) It is a tradition in Pakistan that after the death, people immediately close the eyes and mouth of the deceased. It proves the presence of the witnesses at the place.

ii) The promptitude in lodging of the F.I.R. establishes the presence of the witnesses at the place of occurrence.

iii) The promptitude in the holding of the post mortem examination of the dead body of the deceased proves that the prosecution witnesses had witnessed the occurrence.

iv) video footage cannot be considered as admissible evidence if investigation officer has not recorded the statement of the person who had recorded the said video footage.

v) The cases of the offences specified in entry No. 4 of the Third Schedule to the Anti-terrorism Act, 1997 , are cases of those heinous offences which do not per se constitute the offence of terrorism.

vi) Only creating of sense of fear or insecurity in the society is not by itself terrorism, unless the motive itself is to create fear or insecurity in the society.

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64. **Lahore High Court**
Abid Hussain v. Province of Punjab through District Collector Bahawalpur and fourteen others.
Intra Court Appeal No. 49 of 2023
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC2037.pdf

Facts: This Intra Court Appeal has been filed against the order, passed by the learned Single Judge in Chambers in Writ Petition, whereby the Petition filed by the respondents under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 was allowed and the order passed by respondent namely Additional District Collector /Member Divisional Verification Committee, was set aside being illegal and void as having been passed without jurisdiction.

Issues: i) What are the consequences of amendment of section 2 (A) of the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2022 (XXI of

2022) and whether all properties allotted after the repeal of the Acts and Regulations are subject to scrutiny at any time?
ii) Whether the proceedings pending before any notified officer immediately before the commencement of the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2022, shall stand transferred for final disposal to the Full Board?
iii) What is the definition of "pending cases" under section 2 of the Evacuee Property and Displaced Persons Laws (Repeal) Act (XIV of 1975)?
iv) What are powers of Chief Settlement Commissioner or Notified Officer or any other Settlement Authority, by virtue of Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 regarding any petition or representation if the matter was finalized?

Analysis: i) By virtue of 18th Amendment in the Constitution of Islamic Republic of Pakistan, 1973, the Evacuee Property and Displaced Persons Laws (Repeal) Act (XIV of 1975) was adapted, with amendments, for the province of the Punjab by the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2012 (XXXVIII of 2012) and though an amendment has been made in section 2 of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 through the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2022 (XXI of 2022) and section 2(A) has been added according to which all properties allotted after the repeal of the Acts and Regulations mentioned in subsection (1) shall be subject to scrutiny at any time, and after observing due process of law, if it is found that any land or property was allotted in contravention of any law or through fraud, forgery or misrepresentation, such allotment shall be cancelled.
ii) An amendment has been made in the section 2 (2) of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 through the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2022 (XXI of 2022) and now section 2(2) provides that all proceedings pending before any notified officer immediately before the commencement of the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2022, shall stand transferred for final disposal to the Full Board and all cases decided by the Supreme Court or the Lahore High Court after the commencement of the said Act of 2022 which would have been remanded to the notified officer shall be remanded to the Full Board.
iii) The wording of section 2 of the Evacuee Property and Displaced Persons Laws (Repeal) Act (XIV of 1975), it clearly provides that all proceedings relating to evacuee property which were pending on the cutoff date, that is, 30.06.1974 or any matter which was pending before a superior court in appeal or revision, or which was pending because of remand by a superior court, at the time of Repeal of Evacuee Property and Displaced Persons Laws (Repeal) Act (XIV of 1975) will fall within the definition of pending cases.
iv) Where question of entitlement concerning agricultural property was neither remanded by Supreme Court nor any such directions were made by the High

Court whereby Notified Officer on its strength could commence proceedings, any petition or representation filed with regard to matter which otherwise stood finalized long back or even where aggrieved person might believe to have legitimate claim, could not be entertained by Chief Settlement Commissioner or Notified Officer or any other Settlement Authority by virtue of Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975.

Conclusion: i) According to section 2(A) all properties allotted after the repeal of the Acts and Regulations mentioned in subsection (1) shall be subject to scrutiny at any time, and after observing due process of law, if it is found that any land or property was allotted in contravention of any law or through fraud, forgery or misrepresentation, such allotment shall be cancelled .

ii) Yes as per amendments in section 2 (2) of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 through the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2022 (XXI of 2022) all proceedings pending before any notified officer immediately, shall stand transferred for final disposal to the Full Board.

iii) All proceedings relating to evacuee property which were pending on the cutoff date, that is, 30.06.1974 or any matter which was pending before a superior court in appeal or revision, or which was pending because of remand by a superior court, at the time of Repeal of Evacuee Property and Displaced Persons Laws (Repeal) Act (XIV of 1975) will fall within the definition of pending cases.

iv) Any Settlement Authority by virtue of Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975, could not entertain any petition or representation, if the matter was otherwise finalized long back.

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65. **Lahore High Court**
The State v. Abdul Jabbar.
Murder Reference No.14 of 2022
Abdul Jabbar v. The State.
Criminal Appeal No. 351-J of 2022
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC1914.pdf

Facts: Convict was tried by the learned Additional Sessions Judge, in case F.I.R registered in respect of offences under sections 302 and 325 P.P.C. for committing the Qatl-i-Amd. The learned trial court convicted and sentenced him. Feeling aggrieved, convict lodged the Criminal appeal through jail, assailing his conviction and sentence. The learned trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant.

Issues: i) What are the parameters to prove the case in case of circumstantial evidence?

ii) Whether the delay in the post mortem examination is reflective of the absence of witnesses?

iii) What are rigor mortis and algor mortis?

iv) Whether the prosecution is bound to prove the alleged motive?
v) Whether accused can be convicted on the sole ground that person has been murdered in his shop/house?
vi) On whom burden to prove in criminal case lies and whether it shifts?
vii) Whether Article 122 of the Qanun-e-Shahadat, 1984 can be used as exception to well-established rule of law that the burden is on the prosecution and never shifts?
viii) When evidence offers two interpretations, one favouring the accused and the other prosecution then which one is to be adopted by the court?
ix) What is the standard of proof in a case completely based upon circumstantial evidence and involves capital sentence?

Analysis: i) In a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance by way of reliable and clinching evidence, and the circumstances so proved must form a complete chain of events, on the basis of which no conclusion other than one of guilt of the accused can be reached. Undoubtedly, suspicion, however grave it may be, can never be treated as a substitute for proof. (…) It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.
ii) When the dead body had arrived at the hospital as early as at about 12.00 a.m. (night) then there did not exist any reason for delay in conducting the post mortem examination of the dead body of the deceased except the reason which is apparent that by that time the details of the occurrence were not known and the said time was used to not only to procure the attendance of the witnesses but also to fashion a false narrative of the oral statement. No explanation was offered to justify the said delay in conducting the post mortem examination. This clearly establishes that the prosecution witnesses PW-1 and PW-2 , claiming to have discovered the dead body , were not present at the place of the recovery of the dead body and the delay in the post mortem examination was used to procure their attendance and formulate a false narrative, after consultation and concert…
iii) Rigor mortis is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death. It starts within 2 to 4 hours of death and fully develops in about 12-hours in temperate climate. Similarly, the reverse process with which rigor mortis disappears is called algor mortis.
iv) The prosecution witnesses failed to provide evidence enabling us to determine the truthfulness of the motive alleged and the fact that the said motive was so

compelling that it could have led the appellant to have committed the Qatl- i-Amd of the deceased. There is a poignant hush with regard to the particulars of the motive alleged. No independent witness was produced by the prosecution to prove the motive as alleged. Even otherwise, a tainted piece of evidence cannot corroborate another tainted piece of evidence.

v) The prosecution is bound to prove its case against an accused person beyond a reasonable doubt at all stages of a criminal case and the accused person could not be convicted merely on the basis of a presumption that since the murder of a person had taken place in his house, therefore, it must be he and none else who would have committed that murder. (…) The law on the burden of proof, as provided in Article 117 of the Qanun-e-Shahadat, 1984, mandates the prosecution to prove, and that too, beyond any doubt, the guilt of the accused for the commission of the crime for which he is charged.

vi) On a conceptual plain, Article 117 of the Qanun-e-Shahadat, 1984 enshrines the foundational principle of our criminal justice system, whereby the accused is presumed to be innocent unless proved otherwise. Accordingly, the burden is placed on the prosecution to prove beyond doubt the guilt of the accused, which burden can never be shifted to the accused, unless the legislature by express terms commands otherwise. It is only when the prosecution is able to discharge the burden of proof by establishing the elements of the offence, which are sufficient to bring home the guilt of the accused then, the burden is shifted upon the accused, inter alia, under Article 122 of the Qanun-e-Shahadat, 1984, to produce evidence of facts, which are especially in his exclusive knowledge, and practically impossible for the prosecution to prove, to avoid conviction. (…) It has to be kept in mind that Article 122 of the Qanun-e-Shahadat, 1984 comes into play only when the prosecution has proved the guilt of the accused by producing sufficient evidence, except the facts referred in Article 122 Qanun-e- Shahadat, 1984, leading to the inescapable conclusion that the offence was committed by the accused. Then, the burden is on the accused not to prove his innocence, but only to produce evidence enough to create doubts in the prosecution's case.

vii) In a criminal case, the burden of proof is on the prosecution and article 122 of the Qanun-e-Shahadat, 1984 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. If the article was to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. Article 122 of the Qanun-e-Shahadat, 1984 cannot be used to undermine the well-established rule of law that, save in a very exceptional class of cases, the burden is on the prosecution and never shifts. Throughout the web of the Law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the accused's guilt subject to any statutory exception. No matter what the charge, the

principle that the prosecution must prove the guilt of the accused is the law and no attempt to whittle it down can be entertained.

viii) This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has special relevance in cases where in the guilt of the accused is sought to be established by circumstantial evidence. It is a cardinal principle of justice and law that only the intrinsic worth and probative value of the evidence would play a decisive role in determining the guilt or innocence of an accused person.

ix) To carry a conviction on a capital charge it is essential that the courts should deeply scrutinize the circumstantial evidence because fabricating of such evidence is not uncommon and very minute and narrow examination of the same is necessary to secure the ends of justice. It is imperative for the prosecution to provide all links in chain, where one end of the same touches the dead body and the other, the neck of the accused. The present case is of such a nature that many links are missing in the chain. It would not be wrong to observe that in this particular case, it can be said that there is no link, what to talk about a chain.

Conclusion: i) In a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance by way of reliable and clinching evidence, and the circumstances so proved must form a complete chain of events, on the basis of which no conclusion other than one of guilt of the accused can be reached.

ii) Delay in the post mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and formulate a false narrative, after consultation and concert.

iii) Rigor mortis is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death. It starts within 2 to 4 hours of death and fully develops in about 12-hours in temperate climate. Similarly, the reverse process with which rigor mortis disappears is called algor mortis.

iv) Prosecution is bound to provide evidence to determine the truthfulness of the motive alleged.

v) Accused person could not be convicted merely on the basis of a presumption that since the murder of a person had taken place in his house, therefore, it must be he and none else who would have committed that murder.

vi) The burden is placed on the prosecution to prove beyond doubt the guilt of the accused, which burden can never be shifted to the accused, unless the legislature by express terms commands otherwise.

vii) Article 122 of the Qanun-e-Shahadat, 1984 cannot be used to undermine the well-established rule of law that, save in a very exceptional class of cases, the

burden is on the prosecution and never shifts.

viii) If two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.

ix) To carry a conviction on a capital charge it is essential that the courts should deeply scrutinize the circumstantial evidence. It is imperative for the prosecution to provide all links in chain, where one end of the same touches the dead body and the other, the neck of the accused.

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66. **Lahore High Court**
The State v. Muhammad Imran alias Aamir.
Murder Reference No.17 of 2022
Muhammad Imran alias Aamir v. The State and another.
Criminal Appeal No. 462 of 2022
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC1815.pdf

Facts: The appellant/convict was tried in a case F.I.R. in respect of offences under sections 302,364 and 34 P.P.C. for committing the *Qatl-i-Amd* wherein the trial court convicted him and sentenced him with death under section 302(b) P.P.C. as *Tazir*. On the other hand the trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death.

Issues: i) How circumstantial evidence is to be appreciated in a criminal trial?

ii) What are the pre-requisites for believing the last seen evidence?

iii) Whether a conviction can be solely based on last seen evidence?

iv) Whether a criminal case can be decided exclusively on the basis of D.N.A analysis?

v) Whether D.N.A. analysis report of the Punjab Forensic Science Agency, Lahore can be relied upon where the samples were sent neither in sealed parcels nor in sealed envelopes?

vi) How the D.N.A analysis works to identify the involvement of an accused in an occurrence?

vii) Whether a conviction can be upheld on the basis of medical evidence alone?

viii) Whether for giving the benefit of the doubt to an accused it is not necessary that there should be so many circumstances creating doubts?

Analysis: i) In a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance by way of reliable and clinching evidence, and the circumstances so proved must form a complete chain of events, on the basis of which no conclusion other than one of guilt of the accused can be reached. Undoubtedly, suspicion, however, grave it may be, can never be treated as a substitute for proof.

ii) Pre-requisites for believing the last seen evidence are the proximity of time and nearness of the place of occurrence. Interpreting these two principles, it is

required that deceased shall be seen in the company of the accused by the witnesses some short time before happening of the incident and the place of murder may not be far away from the place of lastly seeing the deceased in the company of the accused by the prosecution witnesses. The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.

(iii) It is settled law that the last seen evidence can have legal worth only if the deceased is seen in the company of the accused quite close to the time of his death so as to exclude any possibility of the deceased coming in contact with anybody else before his death. But it is also settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.

(iv) In our legal framework D.N.A. evidence is evaluated on the strength of Articles 59 and 164 of the Qanun-e-Shahadat, 1984 (QSO). The former provision states that expert opinion on matters such as science and art falls within the ambit of 'relevant evidence'. On the other hand, the latter provision provides that the Court may allow the reception of any evidence that may become available because of modern devices and techniques. Under this regime, the technician who conducts experiment to scrutinize D.N.A. evidence is regarded as an expert whose opinion is admissible in Court. Subsection (3)of Section 9 of the Punjab Forensic Science Agency Act, 2007, reaffirms this legal position when it enacts that "a person appointed in the Agency as an expert shall be deemed as an expert appointed under Section 510 of the Code of Criminal Procedure, 1898 and a person specially skilled in a forensic material under Article 59 of the Qanun-e-Shahadat, 1984 (P.O. X of 1984)." A combined reading of all these provisions shows that the report of the Punjab Forensic Science Agency regarding D.N.A. analysis is per se admissible in evidence under Section 510, Cr.P.C. Since D.N.A. analysis report is reckoned as a form of expert evidence in criminal cases, it cannot be treated as primary evidence and can be relied upon only for purposes of corroboration. This implies that no case can be decided exclusively on its basis.

(v) Credibility of the D.N.A. test inter alia depends on the standards employed for the collection and transmission of samples to the laboratory. It is essential that any item being sent to the Punjab Forensic Science Agency, Lahore for D.N.A. analysis is not contaminated or compromised or manipulated or subverted at any stage. Proper standing operating procedures have to be followed for securing and carefully putting into the parcel the suspected materials to co-relate with the samples of the accused. Similarly, cross contamination of the samples must be prevented because if the samples come in contact with each other then, it will give false positive result.

(vi) When an individual touches an object, epithelial cells are left behind. Touch

D.N.A. is also known as epithelial D.N.A. The same traditional D.N.A. analysis procedures are used to analyze and examine these remaining epithelial cells as are used to analyze and examine bodily fluids. The amount left behind is often less than 100 picograms and is also called low copy D.N.A. This is evidence with "no visible staining that would likely contain D.N.A. resulting from the transfer of epithelialcells from the skin to an object. Due to development, lower amounts of human D.N.A. can be detected and, possibly, a full or partial STR profile can be generated. D.N.A. evidence has emerged as a powerful tool to identify perpetrators of unspeakable crimes and to exonerate innocent individuals accused of similarly heinous actions. The technology has advanced to Polymerase Chain Reaction (PCR) based short tandem repeat (STR) testing. This system multiplies a single copy of a D.N.A. segment to allow for the analysis of the genetic makeup of a small sample. Current analysis makes it possible to determine whether a biological tissue matches a suspect with near certainty.

vii) Medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved incidence. Where all the other pieces of evidence relied upon by the prosecution in a case have been disbelieved and discarded then a conviction cannot be upheld on the basis of medical evidence alone.

viii) It is a settled principle of law that for giving benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then the such benefit is to be extendedto an accused not as a matter of concession but as of right.

Conclusion: i) In a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance by way of reliable evidence forming a complete chain of events leading to no conclusion other than one of guilt of the accused.

ii) The proximity of time and nearness of the place of occurrence are the pre-requisites for believing the last seen evidence.

iii) A conviction cannot be solely based on last seen evidence.

iv) A criminal case cannot be decided exclusively on the basis of D.N.A analysis.

v) D.N.A. analysis report of the Punjab Forensic Science Agency, Lahore cannot be relied upon where the samples were sent neither in sealed parcels nor in sealed envelopes.

vi) D.N.A analysis involves Polymerase Chain Reaction (PCR) based short tandem repeat (STR) testing. This system multiplies a single copy of a D.N.A. segment to allow for the analysis of the genetic makeupof a small sample which makes it possible to determine whether a biological tissue matches a suspect with near certainty.

vii) A conviction cannot be upheld on the basis of medical evidence alone.

viii) For giving the benefit of the doubt to an accused it is not necessary that there should be so many circumstances rather a single circumstance creating reasonable

doubt in the mind of a prudent person is sufficient.

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67. **Lahore High Court**
The State v. Muhammad Bilal alias Mithu, Liaquat Ali alias Liaqu, Aman Ullah.
Murder Reference No.24 of 2018
Muhammad Bilal alias Mithu v. The State.
Criminal Appeal No. 109-J of 2018
Liaquat Ali alias Liaqu Vs. The State.
Criminal Appeal No. 110-J of 2018
Aman Ullah Vs. The State.
Criminal Appeal No. 111-J of 2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC9116.pdf

Facts: In a case registered in respect of offences under sections 302, 396,460 and 412 P.P.C. the learned trial court convicted the accused persons. Feeling aggrieved they assailed their convictions through jail appeal and the learned trial court submitted murder reference seeking confirmation or otherwise of the sentences of death awarded to the appellants.

Issues: i) Whether the facts which establish the identity of any person whose identity is relevant, are relevant facts?
ii) What does the term Identification means and what is its object with regard to the criminal offence?
iii) Whether the court can accept identification as sufficient to establish the identity of the accused?
iv) What is the effect of absence of light on the prosecution case and whether estimator variables are related to a witness?
v) Whether separate identification parade should be held in respect of each accused person if there are more accused persons than one?
vi) Whether the evidence of identification is enough to prove the identified accused has taken part in crime and is it necessary for a witness to clarify how he came to pick out the particular accused?
vii) Whether the recovery can be relied upon where the IO of case did not join any witness of locality?
viii) What is the evidentiary value of recovery if the ocular account is found unreliable?
ix) Whether the recovery of mobile phones proves any fact relevant against accused in the absence of voice call record?
x) Whether the conviction can be upheld on the basis of medical evidence alone?
xi) Whether a single circumstance creating reasonable doubt in the mind of a prudent person is sufficient to extend benefit to the accused?

Analysis: i) Facts which establish the identity of any person whose identity is relevant are, by virtue of Article 22 of the Qanun-e-Shahadat, 1984, always relevant.

ii) The term 'identification' means proving that a person before the Court is the very same that he is alleged, charged or reputed to be. Identification is almost always a matter of opinion or belief. With regard to a criminal offence, identification has a two-fold object: first, to satisfy the investigating authorities, before sending a case for trial to court, that the person arrested, but not previously known to the witnesses, was the one or those who committed the crime,; second, to satisfy the court that the accused was the real offender concerned with the crime.
iii) The Court can accept identification as sufficient to establish the identity of the accused, it is very necessary that there be reliable corroborative evidence, and the corroborative evidence which the Court is entitled to accept in such cases is that of a test identification parade conducted with due precautions. The august Supreme Court of Pakistan in the case reported as PLJ 2019 SC (Cr.C) 153 has mentioned the requirements and safeguards which are to be meticulously followed and observed in all the test identification parades.
iv) The absence of any light source has put the whole prosecution case in murk. Estimator variables are factors related to the witness, like distance, lighting, or stress during the occurrence which factors are directly related to the capacity of a witness to first observe and then to retain the features of the accused for him to subsequently remember them with such clarity so as to make a correct identification later during the test identification parade proceedings.
v) The august Supreme Court of Pakistan has issued guidelines in conducting the identification parade and has clearly held that if there are more accused persons than one, separate identification parade should ordinarily be held in respect of each accused person. The august Supreme Court of Pakistan in case of Hakeem and other Vs. The State (2017 SCMR 1546) at page 1550 while enunciating the principles of law relating to the identification parade has held as under:- “The proper course is to have separate identification parades for each accused”.
vi) The mere fact that witness is able to pick out an accused person from amongst a crowd does not prove that he has identified that accused person as having taken part in the crime which is being investigated. It merely means that the witness happens to know that accused person. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances he came to pick out the particular accused person and the details of the part which the accused played in the crime in question with reasonable particularity. Such kind of test identification proceedings where the part played by the accused is not given, have no legal value.
vii) The recovery cannot be relied where the Investigating Officer of the case did not join any witness of the locality during the recovery, his action is clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898 and therefore the evidence of the recoveries cannot be used as incriminating

evidence against the accused persons, being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence.

viii) It is an admitted rule of appreciation of evidence that recovery is only a supportive piece of evidence and if the ocular account is found to be unreliable then the recovery has no evidentiary value.

ix) In absence of the voice call record or its transcript relating to the calls made and received from the recovered mobile phones, the mere recovery of the same does not prove any fact relevant to prove the charge against the accused. Reliance is placed on the case of "Azeem Khan and another Vs. Mujahid Khan and others" (2016 SCMR 274).

x) Conviction cannot be upheld on the basis of medical evidence alone. The august Supreme Court of Pakistan in its binding judgment titled "Hashim Qasim and another Vs. The State" (2017 SCMR 986) has enunciated the following principle of law: "The medical evidence is only confirmatory or of supporting nature and is never held to be corroboratory evidence, to identify the culprit".

xi) It is a known and settled principle of law that prosecution primarily is bound to establish guilt against the accused without a shadow of reasonable doubt by producing trustworthy, convincing and coherent evidence enabling the Court to draw a conclusion whether the prosecution has succeeded in establishing accusation against the accused or otherwise and if it comes to the conclusion that charges, so imputed against the accused, have not been proved beyond a reasonable doubt, then the accused becomes entitled to acquittal. It is settled principle of law that for giving benefit of doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) Facts which establish the identity of any person whose identity is relevant are relevant.

ii) The term 'identification' means proving that a person before the Court is the very same that he is alleged to be and it has a two-fold object with regard to a criminal offence first, to satisfy the investigating authorities, second to satisfy the court.

iii) The Court is entitled to accept identification in the cases where test of identification parade conducted with due precautions.

iv) The absence of any light source has put the whole prosecution case in murk.Estimator variables are directly related to the capacity of a witness to first observe and then to retain the features of the accused.

v) Separate identification parade should be held in respect of each accused person if there are more accused persons than one.

vi) The mere fact that witness is able to pick out an accused person from amongst a crowd does not prove that he has identified that accused person and is it necessary for a witness to clarify how he came to pick out the particular accused.

vii) The recovery cannot be relied upon where the IO of case did not join any witness of locality.
viii) If the ocular account is found to be unreliable then the recovery has no evidentiary value.
ix) Recovery of mobile phones does not prove any fact relevant against accused in the absence of voice call record.
x) The conviction cannot be upheld on the basis of medical evidence alone.
xi) A single circumstance creating reasonable doubt in the mind of a prudent person is sufficient to extend benefit to the accused.

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68. **Lahore High Court**
Ch. Noman Haseeb v. The learned Special Judge Anti-Corruption Court, Bahawalpur and four others.
Criminal Revision No. 217 of 2022
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2023LHC1635.pdf

Facts: Through the instant criminal revision petition, the petitioner has assailed the vires of the impugned order, passed by the learned Special judge, Anti-Corruption Court, whereby the application submitted by the petitioner under sections 94 and 540 Cr.P.C. seeking to produce copies of certain documents, as part of prosecution evidence, was rejected.

Issue: What are the prerequisites for a court to exercise its powers embodied under sections 94 and 540 Cr.P.C to summon a witness?

Analysis: A perusal of sections 94 and 540 of the Code of Criminal Procedure, 1898 makes it abundantly clear that the power of the court under sections 94 and 540 of the Code of Criminal Procedure, 1898 is to summon a person having the custody of the said documents or summon any person as a witness whose evidence appears to be essential to the just decision of the case. As mentioned above, the petitioner in the application submitted by him under sections 94 and 540 of the Code of Criminal Procedure, 1898 had not sought the summoning of any person having the custody of the said documents nor sought that any person be examined as a witness who had prepared the said documents. The learned Special judge, Anti-Corruption Court, was right to observe that the powers of the learned trial court provided under sections 94 and 540 of the Code of Criminal Procedure, 1898 did not allow for the production of any documents without the summoning of the person having the custody of the said documents or without the summoning of any witness who had prepared the said documents.

Conclusion: For section 94 Cr.P.C 1898, the witness summoned must have the custody of the document sought to be produced and for section 540 Cr.P.C 1898, the evidence of the witness summoned must appear to be essential for the just decision of the case.

69. **Lahore High Court**
Ghulam Madni v. The State and five others.
Crl. Revision No.203 of 2022
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC9322.pdf

Facts: Through this criminal revision petition, the petitioner has challenged the vires of the order passed by the learned Additional Sessions Judge whereby an application filed by the petitioner seeking re-summoning of witness for further re-examination was dismissed.

Issue: What is the basic principle for re-summoning of witnesses for re-examination?

Analysis: Perusal of the record reveals that not a single circumstance has been mentioned necessitating the resummoning of witness for further reexamination. The petitioner also failed to claim in the said application that the failure to further re-examine said witness would result in failure of justice and cause prejudice to the petitioner. Witnesses can only be recalled for further examination in exceptional cases where interest of justice so demands to rectify an obvious mistake. The petitioner has failed to satisfy this Court that further reexamination of above said witness was necessary for the just decision of the case. No prosecution witness can be summoned for further re-examination just to fill in the lacuna by any party. If this is allowed, trials will never come to an end. The learned trial court has certainly been vested with adequate powers under section 540, Cr.P.C. to summon and examine or re-summon and re-examine any witness in the trial before pronouncing the final verdict, but said provisions of the Code do not ingrain any such interpretation whereby it should be allowed to be used by a party to fill-in the lacunae of its case or to unnecessarily protract proceedings of the trial to defeat the ends of justice. This is what the learned trial Court has kept in view while dealing with the application of the petitioner. There was no occasion for the learned trial court to have thought in terms, otherwise. The impugned order has been passed strictly in accordance with the requirement of the law and it did not lack any virtue of a legal order. The witness to be re-called for re-examination has already been examined twice and refusal to re-summon him will not amount to miscarriage of justice in any way. The revisional jurisdiction of this Court can be exercised only when there are exceptional circumstances and the order impugned is perverse or suffering from any type of infirmity…

Conclusion: Witnesses can only be recalled for re-examination in exceptional cases where interest of justice so demands to rectify an obvious mistake as no prosecution witness can be summoned for re-examination just to fill in the lacuna by any party. If this is allowed, trials will never come to an end.

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70. **Lahore High Court**
Weshal Khalil and two others v. The State and another.
Criminal Appeal No. 118 of 2022
Ali Raza v. The State and another.
Criminal Appeal No. 72 of 2022
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC9363.pdf

Facts: Feeling aggrieved, convicts lodged the Criminal Appeals, assailing their conviction and sentences.

Issues: i) Whether prosecution has to establish the source of light if incident occurred at night time?
ii) Whether the delay in the post mortem examination is reflective of the absence of witnesses?
iii) Whether recovery of weapon can be relied upon by the prosecution which was effected in clear violation of section 103 Cr.PC?
iv) What is the evidentiary value of recovery in case the ocular account is found to be unreliable?
v) Whether conviction can be based on the basis of medical evidence alone when other evidence has been disbelieved?
vi) Whether benefit of doubt arising out of a single circumstance can be extended to accused?
vii) Whether the courts can presume the existence of any fact?

Analysis: i) The prosecution witnesses failed to establish the fact of availability of any light source and in absence of their ability to do so, this Court cannot presume the existence of such a light source. The absence of any light source has put the whole prosecution case in the dark. It was admitted by the prosecution witnesses PW-1 and PW-2 themselves that it was a dark night and they had used the light of the torch light, never produced, to identify the assailants during the occurrence and as the prosecution witnesses failed to prove the availability of such light source, their statements with regard to them identifying the assailants cannot be relied upon. The failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence has repercussions, entailing the failure of the prosecution case…
ii) The reason which is apparent for the delayed conducting of the post mortem examination of the dead body is that by that time the details of the occurrence were not known and the said time was used not only to procure the attendance of the witnesses but also to fashion a false narrative of the occurrence. No explanation was offered to justify the said delay in conducting the post mortem examination and also the delay in submission of the police papers. This clearly establishes that the witnesses claiming to have seen the occurrence or having seen the appellants escaping from the place of occurrence were not present at the time of occurrence and the delay in the post mortem examination was used to procure their attendance and formulate a dishonest account, after consultation and

planning. It has been repeatedly held by the august Supreme Court of Pakistan that such delay in the post mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.
iii) The recoveries of the Sotis from the appellants cannot be relied upon as the Investigating Officer of the case did not join any witness of the locality during the recoveries of the said Sotis, which was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898. The provisions of this section, unfortunately, are honoured more in disuse than compliance. (…) For the above mentioned recovery of weapons the prosecution had failed to associate any independent witness of the locality and, thus, the mandatory provisions of section 103, Cr.P.C. had flagrantly been violated in that regard.
iv) It is an admitted rule of appreciation of evidence that recovery is only a corroborative piece of evidence and if the ocular account is found to be unreliable then the recovery has no evidentiary value.
v) As all the other pieces of evidence relied upon by the prosecution, in this case, have been disbelieved and discarded by this Court, therefore, the appellants' conviction cannot be upheld on the basis of medical evidence alone. (…) The medical evidence is only confirmatory or of supporting nature and is never held to be corroboratory evidence, to identify the culprit.
vi) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.
vii) Article 129 of the Qanun-e-Shahadat, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case.

Conclusion: i) The failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence has repercussions, entailing the failure of the prosecution case.
ii) Delay in the post mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.
iii) Recovery of weapon cannot be relied upon by the prosecution which was effected in clear violation of section 103 Cr.PC.
iv) If the ocular account is found to be unreliable then the recovery has no evidentiary value.
v) When all the other pieces of evidence relied upon by the prosecution is disbelieved and discarded, conviction cannot be based on the medical evidence alone.
vi) For giving the benefit of the doubt it is not necessary that there should be so

many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.
vii) Article 129 of Qanun-e-Shahadat Order, 1984 allows the courts to presume the existence of any fact, which it think likely to have happened in the ordinary course of natural events.

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71. **Lahore High Court**
Umair Afzal v. The Additional Sessions Judge/ Justice of Peace, Bahawalpur and three others.
Writ Petition. No.9774 of 2022
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2023LHC1865.pdf

Facts: Petitioner moved an application under section 22-A/22-B Code of Criminal Procedure, 1898, complaining of the non-registration of the F.I.R. under section 489-F PPC by the police authorities, the same was dismissed by the learned Ex-Officio Justice of Peace and a direction was issued to the SHO Police to initiate proceedings against the petitioner in respect of offence made punishable under section 182 P.P.C., hence, this petition.

Issues: i) Whether ex officio Justice of Peace can issue directions to the SHO police while deciding the application filed u/s 22-A Cr.P.C?
ii) Who is authorised to exercise his powers when false information is given by a person knowing it to be false?
iii) What are the pre-requisites to initiate action under section 182, P.P.C; whether any direction is necessary by the other authority to proceed u/s 182 P.P.C?

Analysis: i) A perusal of the provision of section 22-A(6), Cr.P.C. reveals that the learned Ex-officio Justice of Peace could only pass an order directing registration of a criminal case if a cognizable offence was made out from the application or decline the same. Any direction given to the S.H.O. by the learned ex-officio Justice of Peace to initiate proceedings against the petitioner under section 182, P.P.C. was beyond the purview of section 22-A, Cr.P.C.
ii) It is the public servant to whom false information is given by a person knowing it to be false, who thereafter, moves the machinery of law against the accused person to his detriment or to the injury or annoyance of the accused person. The framers of law left the question for determination to the public servant, as to how far powers exercised, by him caused detriment, annoyance and injury to the person proceeded against as accused in consequence of the false information given to him by the complainant.
iii) In order to initiate action under section 182, P.P.C., it is essential that the false complaint involving cognizable offence should properly be registered, investigated and found to be false and baseless. In this manner, the prerogative to proceed under section 182, P.P.C. lies only with the Police Officer, who has moved the machinery of law against the accused nominated in the F.I.R. by the

complainant and no other Authority can direct the concerned Police Officer to proceed against the first informant, who has given the false information.

Conclusion: i) Ex officio Justice of Peace cannot issue directions to the SHO police while deciding the application filed u/s 22-A Cr.P.C.
ii) It is the public servant to whom false information is given by a person knowing it to be false, who thereafter, moves the machinery of law against the accused person to his detriment or to the injury or annoyance of the accused person.
iii) In order to initiate action under section 182, P.P.C., it is essential that the false complaint involving cognizable offence should properly be registered, investigated and found to be false and baseless; no other Authority can direct the concerned Police Officer to proceed against the first informant, who has given the false information.

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72. **Lahore High Court**
Kashif Mehmood v. Election Commission of Pakistan & 02 others
Election Appeal No.6 of 2023/BWP.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC2145.pdf

Facts: The appellant filed an Election Appeal under Section 63 of the Election Act, 2017 read with Rule 54 of the Election Rules, 2017 against an order passed by Returning Officer whereby his nomination papers against a seat of MPA were rejected.

Issues: (i) Whether a permanent disqualification under Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973 requires a definite declaration by any competent Court of law?
(ii) Whether a Returning Officer is possessed with a power to issue any declaration by itself in a summary jurisdiction?

Analysis: (i) The right to contest election is a fundamental right in terms of Article 17 of the Constitution of Islamic Republic of Pakistan, 1973 and it has to be read into the language of Article 17(2). Declaring someone as disqualified for any term to become a member of the parliament is a penalty, depriving him of his constitutional rights. In order to deprive a citizen of his fundamental right to contest election, the requirement of a declaration by a competent Court of law as provided in Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973 has to be strictly construed. Without declaration by a competent Court of law, after adopting due process through fair trial, would be against his fundamentalright guaranteed by the Constitution and he cannot be termed to be no longer sagacious, righteous, non-profligate, honest and ameen.
(ii) It is settled law that the Returning Officer has no power to issue any declaration by itself in a summary jurisdiction.

Conclusion: (i) A permanent disqualification under Article 62(1)(f) of the Constitution of

Islamic Republic of Pakistan, 1973 requires a definite declaration by any competent Court of law.
(ii) A Returning Officer has no power to issue any declaration by itself in a summary jurisdiction.

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73. **Lahore High Court**
Muhammad Rasheed (deceased) through his legal heirs, etc. v. Muhammad Ismail, etc.
Civil Revision No.1090 of 2009
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC1403.pdf

Facts: Subject matter of the present Civil Revision is validity of mutation based on an oral gift, which the petitioners claim to have been legally made, by one, in favour of predecessor-in-interest of petitioners. Challenge was laid by the respondents to the above referred impugned mutation on the strength of inquiry report conducted by the Officials concerned for ascertaining the actual date of death of the deceased and an order was passed thereon by the said Officials where after claim of the respondents regarding actual date of death was accepted. The suit instituted by the respondents was decreed by the learned Trial Court vide judgment and the said findings were upheld by the learned Appellate Court below, in appeal preferred by the petitioners. Civil Revision treated as a connected matter inasmuch as the above referred inquiry report and order(s) passed thereon were challenged by the petitioners by instituting a separate/independent declaratory suit that was concurrently dismissed in favour of the respondents and said findings have been assailed by the petitioners through connected Civil Revision referred above. Although after framing of the issues, the suits instituted by the petitioners and the respondents were separately contested and decided through separate judgments in favour of the respondents, yet both the petitions are so interwoven with each other that the decision in one case has direct implications on the decision in other and learned counsel for the parties are in agreement to that effect, therefore, with their consent present petition is treated as the main case and Civil Revision as a connected matter and both are being decided through this single judgment.

Issues: i) Whether the decision on the revenue side operates as res-judicata in the suit instituted before the Civil Court?
ii) Whether Mutation by itself creates any title?
iii) Whether period of limitation would not be an embargo upon a justifiable claim directed against fraud especially in cases of inheritance?

Analysis: i) It is imperative to note that any decision, on the revenue side, does not operate as bar on a subsequent civil suit, more particularly, when question of fraud is involved in respect of which the jurisdiction of the Revenue Authorities is barred, for the reasons that the proceedings before the Revenue Officers and/or the

Revenue Courts are summarily conducted without recording of evidence. Section 11 of the CPC that is based on doctrine of resjudicata clearly stipulates that no subsequent suit shall be entertained in which the matter is directly and substantially the same in a former suit between the same parties and decided by a Court of competent jurisdiction. Therefore, Section 11 of the CPC is applicable only where earlier as well as the subsequent proceedings are before the Courts, which are competent to decide both the matters (…). Therefore, one of the necessary conditions for the applicability of principle of res-judicata that former suit should have been decided by the Court competent to try the subsequent suit is an aspect that is missing in the instant case as the Revenue Court and Civil Court are not vested with the similar jurisdiction rather their jurisdiction is mutually exclusive to each other in certain matters. Jurisdiction of Civil Court is barred in terms of Section 172 of Land Revenue Act, 1967 only with respect to matters exclusively vested in the jurisdiction of Revenue Courts under the said provision and civil suit is always maintainable under Section 53 of the Act to establish right or title in respect of immovable property where the Revenue Court lacks jurisdiction.

ii) It is by now well-settled that a mutation by itself does not create any title unless it can be substantiated to be backed by a valid transaction more particularly if the transaction is in the nature of Hiba depriving legal heirs of the donor.

iii) It is settled principle of law that fraud vitiates the most solemn proceedings and thus period of limitation would not be an embargo upon a justifiable claim directed against fraud, more particularly if same involves right of a person to inheritance of the property.

Conclusion: i) Any decision, on the revenue side, does not operate as bar on a subsequent civil suit, more particularly, when question of fraud is involved in respect of which the jurisdiction of the Revenue Authorities is barred.

ii) The mutation by itself does not create any title unless it can be substantiated to be backed by a valid transaction.

iii) Yes, the period of limitation would not be an embargo upon a justifiable claim directed against fraud, more particularly if same involves right of a person to inheritance of the property.

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74. **Lahore High Court**
Ghulam Nabi v. Kabir Khan.
R.F.A. No.31378 of 2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC2090.pdf

Facts: This regular first appeal is directed against judgment and decree passed in suit instituted by the respondent, for recovery of amount on the basis of Demand Promissory Note.

Issues: i) What is starting point of limitation when the amount is lent on the basis of a Demand Promissory Note?

ii) What presumption is attached to the pro note in terms of provisions of Negotiable Instruments Act, 1881?

Analysis: i) Article 73 of the Act envisages the time to start running from the date of the negotiable instrument, Article 64-A contemplates that time begins to run when the debt becomes payable. The term 'payable' in relation to a debt/loan means how and when an amount of money should be paid by the borrower to the lender. To determine this point, the contents of the Promissory Note are to be looked into. When the amount mentioned in the pro-note is clearly stated to be payable on demand. In case of a Demand Promissory Note, payment would become due when the demand is made and not met. Therefore, such matter is governed by Article 64-A of the Act and starting point is when the debt becomes payable. This Court is of the opinion that after insertion of Article 64-A of the Act, money lend on the basis of a Demand Promissory Note is truly a demand loan and it only becomes payable once demand is made and not met and not from the date when the loan is first made and/or the said Promissory Note is executed.

ii) Presumption of due execution of a negotiable instrument, for consideration, is attached to the pro-note in terms of provisions of Negotiable Instruments Act, 1881 and it is obligatory on part of the appellant to rebut the same by leading evidence.

Conclusion: i) After insertion of Article 64-A of the Act, money lent on the basis of a Demand Promissory Note is truly a demand loan and it only becomes payable once demand is made and not met.

ii) Presumption of due execution of a negotiable instrument is attached to the pro-note in terms of provisions of Negotiable Instruments Act, 1881.

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75. **Lahore High Court**
Amraf Butt v. Imran Bashir, etc.
Writ Petition No.6959 of 2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC1615.pdf

Facts: The respondent filed a guardian petition under Section 25 of the Guardians & Wards Act, 1890 seeking permanent custody of his minor son. During the pendency of the said guardian petition, an interim order was passed for the welfare of minor. Then the respondent withdraws his guardian petition. After that, the respondent moved an application for implementation of that order. The learned Guardian Judge directed the petitioner to comply with that interim order. Feeling aggrieved, the petitioner preferred an appeal, which was dismissed by the learned Appellate Court below, hence, the present constitutional petition has been filed.

Issues: (i) Whether the interim order passed in consolidated proceedings, ceases to effect after the guardian petition filed by the respondent is dismissed as withdrawn?

(ii) Whether welfare of the minor can be sacrificed at the altar of procedural niceties?

Analysis: (i) If interim order is passed in consolidated proceedings and withdrawal of one guardian petition (of the respondent) does not mean that the entire matter came to an end and the order of withdrawal had the attire of the final order when the connected guardian petition of the petitioner is pending. Therefore, this Court is of considered opinion that the interim order does not cease to have effect by mere withdrawal of guardian petition filed by the respondent once the proceedings were consolidated in nature and same benefited the petitioner to keep the permanent custody of the minor as her guardian petition remained pending.

(ii) It is imperative to note that in the matters emanating from the guardianship proceedings welfare of the minor is to be taken as the most important/paramount factor. The welfare of the minor is supposed to be of paramount consideration and is an on-going phenomenon that cannot be circumscribed by some mathematical calculation or hyper technicalities of civil procedure as the welfare of the minor cannot be sacrificed at the altar of procedural niceties.

Conclusion: (i) The interim order does not cease to have effect by mere withdrawal of guardian petition filed by the respondent once the proceedings were consolidated in nature.

(ii) Welfare of the minor cannot be sacrificed at the altar of procedural niceties.

LATEST LEGISLATION/AMENDMENTS

1. Vide Notification No. SO(CAB-I)2-2/2013, dated 16.03.2023, amendments have been made in the first and second schedule of the Punjab Government Rules of Business 2011
2. Vide Notification No. SOR-III(S&GAD)1-30/2021, dated 10.03.2023, amendments have been made in the schedule of the Punjab Public Service Commission Rules, 2016
3. Vide Notification No. 690/Ad-VII dated 04.02.2022, amendments have been made in the schedule of the Punjab Police Special Branch (Technical Cadre) Service Rules 2016
4. Vide Notification No. 3195/PAMRA/DG/22, dated 29.09.2022, amendments have been made in clause 2 of the Punjab Private Sector Agricultural Marketing Regulations 2021
5. Vide Notification No. 3219/PAMRA/DG/22, dated 30.09.2022, amendments have been made in clause 38 of the Punjab Market Committees Regulations 2021
6. Vide Notification No. 3436-A/PAMRA/DG/22, dated 29.11.2022, amendments have been made in Clause 34 of the Punjab Market Committees Regulations 2021

7. Vide Notification No. SO(SW)5-1/2014 (P-XI), dated 08.03.2023, Secretary, Social Welfare and Bait-ul-Maal Department has been appointed as treasurer of charitable endowments.
8. Vide Notification No. SO(SW)5-1/2014 (P-XI), dated 24.03.2023, the Scheme for Administration of Pakistan Rangers (Punjab) Foundation has been made.

SELECTED ARTICLES

1. HARWARD LAW REVIEW

http://law.howard.edu/sites/default/files/related-downloads/Vol.%2065%2C%20Issue%203%20%28Spring%202022%29.pdf

Interpreting the People's Constitution: Pauli Murray's Intersectionality as a Method of Constitutional Interpretation by Kufere Laing

In Marbury v. Madison, the Supreme Court defined the provincial duty of federal courts: to "say" what the law is. Since this decision, jurists and scholars alike have debated what is the proper method to interpret the Constitution. The most popular, and I argue most disastrous, method is originalism—or simply, the Constitution's meaning is fixed by the Framer's imagination. Like Dred Scott, and other decisions demonstrate, the Framers' limited understanding of humanity results in a constitution that only protects some people, not "the People." To this end, I argue that jurists should learn from Pauli Murray's intersectionalist interpretive method. This framework begins with a straightforward premise: your rights end where another fellow's begin. By employing this interpretive lens, courts are protectors of rights and truly include "the People."

2. HUMAN RIGHTS LAW REVIEW

https://academic.oup.com/hrlr/article/21/2/302/6129940?searchresult=1

Regulatory Responses to 'Fake News' and Freedom of Expression: Normative and Empirical Evaluation by Rebecca K Helm and Hitoshi Nasu

National authorities have responded with different regulatory solutions in attempts to minimise the adverse impact of fake news and associated information disorder. This article reviews three different regulatory approaches that have emerged in recent years—information correction, content removal or blocking, and criminal sanctions—and critically evaluates their normative compliance with the applicable rules of international human rights law and their likely effectiveness based on an evidence-based psychological analysis. It identifies, albeit counter intuitively, criminal sanction as an effective regulatory response that can be justified when it is carefully tailored in a way that addresses legitimate interests to be protected.

3. **STATUTE LAW REVIEW**
https://academic.oup.com/slr/article/44/1/hmac017/7103234?searchresult=1

The Problem of Interpretive Canons by David Tan

In this paper it is shown that interpretive canons are either constitutionally invalid because of the principles of interpretation it establishes, or a theory of interpretation can be made to be inconsistent: where a theory of interpretation says do p, then a new canon can say do not-p. This is called the Canon Dilemma. Whichever horn of the dilemma is taken as acceptable (accept invalidity or possible inconsistency), this shows that canons cause more problems for theorising about interpretation than currently realised. Some might interpret the Canon Dilemma as a process of theory change (p is replaced with not-p rather than being contradicted by it), but even then problems of incoherence still persist. This paper also shows a connection between debates on the constitutionality of interpretive canons and the descriptive accuracy of linguistic theories of interpretation.

4. **SPRINGER**
https://link.springer.com/article/10.1007/s40319-023-01321-y

ChatGPT and Generative AI Tools: Theft of Intellectual Labor? By Alain Strowel

Since its release in November 2022, ChatGPT, the Large Language Model trained by OpenAI to interact in a conversational way, has attracted more than 100 million users, as well as the attention of the press. Numerous opinions of "thought leaders" have been published, some heralding "an intellectual revolution" (e.g. Henry Kissinger, Eric Schmidt and Daniel Huttenlocher), others criticizing "the false promise of ChatGPT" (e.g. Noam Chomsky). Many old markets and tech businesses feel exposed. The education sector is also trying to address the new challenges, which include ethics in research and student plagiarism. At the same time, generative AI has prompted the interest of tech companies and investors: Microsoft will inject more than USD 10 billion in OpenAI and Google has invested USD 300 million in Anthropic, etc.

5. **THE CANDIAN JOURNAL OF LAW & JURISPRUDENCE**
https://www.cambridge.org/core/journals/canadian-journal-of-law-and-jurisprudence/article/theorizing-access-to-civil-justice/DF1543CC98E8D03E9F0D42940A6209A9

Theorizing Access to Civil Justice by Matthew Dylag

Despite more than half a century of reform efforts, access to civil justice is still understood to be in a state of crisis. Part of the reason for this is because there is no consensus among the legal community on the meaning of justice in this context. This paper seeks to provide a much-needed theoretical underpinning to the access-to-civil-justice movement. It advances 'justice as fairness,' as articulated by the American philosopher John Rawls, in conjunction with Lesley Jacobs' model of equal opportunities, as a suitable theory in which to frame the access-to-civil-justice movement. I explain why this framework is appropriate for pluralistic democracies like Canada and

how it can be used to define measures of justice. This exercise is thus not simply a theoretical discussion, but rather is intended to be used as a practical framework to assess current and proposed policy initiatives.

CORRIGENDUM

In the last bulletin, there was an error in the judgment mentioned at Sr. No.38 rendered by the Hon'ble Division Bench in Criminal Appeal No.654 of 2022 and the "Issue" was framed as under:-

"What are the evidential requirements to sustain a conviction in an offence of writing"?

In the above issue, the actual word was to be written as **"rioting"** but due to typographical mistake it was written as **"writing",** so the said mistake is regretted and this corrigendum is issued.