LAHORE HIGH COURT

BULLETIN

Fortnightly Case Law Update ***Online Edition***

Volume - III, Issue - XIII

01 - 07 - 2022 to 15 - 07 - 2022

Published By: Research Centre, Lahore High Court, Lahore

Online Available at: https://lhc.gov.pk/news_letters

Disclaimer

Due care and caution has been taken in preparing and publishing this bulletin. Where required, text has been moderated, edited and re-arranged. The contents available in this Bulletin are just for Information. Users are advised to explore and consult original text before applying or referring to it. Research Centre shall not be responsible for any loss or damage in any manner arising out of applying or referring the contents of Bulletin.

FORTNIGHTLY CASE LAW BULLETIN

(01-07-2022 to 15-07-2022)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

		have any statutory remedy or rules or regulations of service; Procedure to be adopted when plaint appears to be barred by law; Jurisdiction of civil courts		
4.		Counting of date of seniority of members of police service; particular claim of promotion or seniority as fundamental right; Authority to make out a seniority list of members; Antedated seniority not a vested right	Service Law	9
5.		Power of Board of CDA to accord permission regarding change of status of property in breach of Master plan of Islamabad	Civil Law	10
6.		Meaning & scope of phrase 'hardened, desperate or dangerous criminal'; Connection of previous criminal record in proving accused as hardened, desperate or dangerous criminal	Criminal Law	11
7.		Cross version as ground for holding a case of further inquiry to grant bail		12
8.	Lahore High Court	Defection as disqualification U/A 63 and procedure for filing vacant post U/A 224 (6) of Constitution; Dependency of reserved seats for women and non-Muslims in Assembly on basis of subsequent increase/decrease in general seats of political parties; Applying principle of retrenchment to members of assembly	Constitutional Law	13
9.		Judgment on admission of gift by donor; Jurisdiction of Civil Court in Declaring a person 'mentally disordered person'	Civil Law	15
10.		Alienation of specific portion of joint holding without partition; Effect of improvement made over specific part of common property before regular partition; Scope of interference of High Court regarding concurrent findings of fact		16
11.		Proving registered document when its construction is doubted; Reading statement of a witness in isolation; Proving documents executed by feeble, week & old person; Value of	Civil Law	17

		admission of signature regarding proving of execution of document; Running of limitation against documents proved to be result of fraud etc; Preference of findings when there is conflict between findings of trial and lower appellate court		
12.		Criteria for treating property as benami; calling of information from suspected benamidar or beneficial owner; Initiating proceedings against benamidar; issuance of summons under Act of 2017		19
13.		Conditions for making amendment in assessment; erroneous assessment order; Prejudicial to interest of revenue; Mandatory notice u/s 111 of ordinance 2001	Tax Law	21
14.		Restitution of possession of property taken over through execution of decree	Civil Law	22
15.		Pleading all facts of mala fide of act of public functionary; Power of Collector to denotify acquisition proceedings		23
16.		Effect of non-framing of issues on vires of judgment; Execution of contract by minor; Reckoning of limitation in case of disability		24
17.	Lahore High Court	Amount paid in consideration for acquiring rights of exclusive sale amounts to 'services' or 'royalty'; deduction of tax when no actual payment made; apportionment of expenditures u/s 67 of Ordinance 2001; nature of rule 13 of Rules of 2002; Striking down delegated legislation; Question of law u/s 133	Tax Law	25
18.		Termination of lien of deputationist when civil servant not absorbed in borrowing department; status of pension; Arbitrary refusal etc of pension	Service Law	27
19.		Rules to remain in precinct of statute; Court declaration of delegated legislation as invalid and ultra vires	Civil Law	28
20.		Object & purpose of identification; Evidentiary value of identification	Criminal Law	28

		parade; Implicit reliance on statement of injured witness; Effect of mitigating circumstances on reduction of sentence		
21.		Effect of non-mentioning of time of occurrence; Effect of failure to prove the presence of light source when occurrence took place at night; Effect of contradiction of ocular account and medical evidence; Effect of unjustified delay in reporting matter; Effect of delay in post mortem examination; Acquittal & conviction on the basis of same set of witnesses; Value of recovery made in violation of section 103 CrPC;		30
22.		Separate punishment of daman for causing hurt not liable to arsh; sentence of imprisonment as tazir in all cases of hurt while awarding principal sentence of hurt; Accused held guilty by court on evidence and initial presumption of innocence; Release of convict of short sentence on bail during pendency of appeal		34
23.		Investigation & substitution of findings of previous IO by verifying officer		35
24.		Principle of res judicata & proceedings u/s 22-A CrPC; Application of res judicata to administrative determinations		36
25.	Lahore High Court	Providing of an opportunity for complying with requirements of proviso of Order XLIII of rule 1 CPC; Order of penal nature while deciding matter on technical grounds	Civil Law	37
26.		Limitation for filing application for leave to defend; Second application on same subject after dismissal of first on technical ground; Determination of question of limitaiton		38
27.		Purpose of preparing waiting list at time of affixing list of selected candidates; Appointment of candidates on waiting list; Attribution of delay to candidates on waiting list in declaration of post as vacant due to non-joining of successful candidate	Service law	39

28.	Lahore High Court	Conviction on confession without recording of evidence when accused pleads guilty at the time of framing charges; Mode & manner of recording of statement of accused by magistrate or court; When to record statement u/s 342 of CrPC	Criminal Law	40
29.		Conviction and acquittal of different set of accused on same set of witnesses; Evidentiary value of recovery of weapon of offence when ocular account disbelieved; Conviction on the basis of abscondence alone		41
30.		Summarily dismissal of application u/s 540 of CrPC		43
31.		Extending of benefit u/s 382-A CrPC after the decision of appeal; nature of provisions of section 382-A CrPC; Extending benefit u/s 382-A to convict whose sentence converted from death to life imprisonment		43
32.		Fact existence of which court can presume; Effect of non-registration of FIR at police station; Acquittal & conviction of different accused on same set of witnesses; Rigor mortis; Value of motive & recovery if ocular account is unreliable; Benefit of doubt arising out of single circumstance		44
33.		Kinds of appeals abate on death of accused		46
34.		What inference can be drawn if witness not injured, Delay in FIR; Delay in post mortem; evidentiary value of recovery; Principle u/A 117 of QSO; Burden to prove on prosecution and accused		47
35.		Application of section 5 of Limitation Act on application; Invocation of section 561-A of CrPC to condone gross negligence of a party		49
36.		Declaring guilty a person on basis or commission of murder at his house; Shifting of onus to prove to accused		50
37.		Value of report of Government analyst without mentioning the test applied		51

		and details of recognized protocol followed		
38.		Parameters to prove case through circumstantial evidence; Concept of last seen evidence		52
39.		What inference to be drawn if witness not attempted to rescue the deceased; Delay in FIR; Rigor Mortis; ; Proving of motive; Effect of delay of post mortem; Acquittal & conviction of different accused on same set of witness; Principle u/A 117 of QSO; Shifting of burden to proof on accused; benefit of doubt arising out of single doubt		53
40.		Circumstances for exercising of power of Quashing FIR by High Court u/s 561-A CrPC		56
41.	Lahore High Court	What inference to be drawn if witness not attempted to rescue the deceased; Delay in FIR; Effect of non-production of evidence; Rigor Mortis; Effect of delay of post mortem; Acquittal & conviction of different accused on same set of witness; Principle u/A 117 of QSO; Shifting of burden to proof on accused; benefit of doubt arising out of single doubt	Criminal Law	56
42.		Extending of benefit of 382-A to accused who admitted to jail again in another case		59
43.		Consideration of fact of personal grudge or ulterior motive while deciding application of exhumation of dead body; Islamic point of view regarding disinterment of grave		60
44.		Conviction & acquittal of different accused on same set of witnesses; Prosecution to prove the case beyond reasonable doubt; when burden to prove shifts to accused		61

45.		Chance witness to justify his presence; Effect of non-production of natural; Shifting of onus to prove to accused; Value of recovery made in violation of section 103 of CrPC; Evidentiary value of motive and recovery when occualr account disbelieved; Effect of delay of in sending empties to PFSA;		62
46.		Assessment of evidentiary material at pre-arrest bail stage; Liberty of citizens guarded by court		66
47.		Difference between 'Aala Malik & Adna Malik' ; Abolishing of Aala Milqiat and other similar interests & making of Adna Malik as full proprietors; Duty of framing of correct & necessary issues	Civil Law	66
48.		Direct reference before court; Limitation period for filing reference		67
49.		Imposition of condition by court while granting bail	Criminal Law	68
50.	Lahore High Court	Suit for recovery of compensation when land acquired without adopting due process; Referring claim to collector for compensation of illegal acquisition; Moulding of relied by high court in revisional jurisdiction	Civil Law	69
51.		Defending suit without paying interim maintenance	Family Law	70
52.		Proceedings u/ 133 CrPC when public right not officially sanctioned; Dedication of way for public use by owner of joint khata; Purpose of insertion of section 133 in CrPC	Civil Law	71
53.		Provision in Anti-Corruption regime entitling DG to constitute joint investigation team; Hearing of complainant before ordering change investigation; What is 'speaking order'	Criminal Law	72
54.		Mandatory regular inquiry for termination of employee on ground of misconduct	Service Law	73

LATE$T LEGI$LATION/AMENDMENT$

$ELECTED ARTICLE$

1. **Supreme Court of Pakistan**
Suo Moto Case No.1 of 2022
Pakistan People's Party Parliamentarians (PPPP) through its Secretary General Mr. Farhatullah Babar and others etc v. Federation of Pakistan through Secretary M/o Law and Justice Islamabad and others etc
Constitution Petition Nos.3 to 7 of 2022
Mr. Justice Umar Ata Bandial, CJ , Mr. Justice Ijaz ul Ahsan, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Munib Akhtar, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/s.m.c._1_2022_detailed.pdf

Facts: The present suo motu proceedings were initiated pursuant to the recommendations of 12 learned Judges of this Court. The proceedings took notice of the events that transpired in the National Assembly ("NA") earlier in the day. The Orders of the Day for 03.04.2022 issued by the NA Secretariat listed voting on the resolution of no confidence ("RNC") against Prime Minister. However the scheduled voting did not take place. Instead, the RNC was dismissed by the Deputy Speaker on a point of order raised by the Law Minister shortly after the House had convened. Within a few hours thereafter the NA was dissolved by the President of Pakistan on the advice of the PM. Other Constitution Petitions were also filed challenging the actions of the Deputy Speaker, PM and President.

Issues: i) What is procedure for initiation of Resolution for no confidence (RNC)?
ii) When Supreme Court can take up matter under Article 184 (3) of constitution?
iii) When political parties acquire the right to form Government?
iv) When Government of a Prime Minister can be removed?
v) Who exercises the power & authority of state of Pakistan according to Constitution?
vi) How the element of public importance is determined?
vii) Whether national security can be taken as defence to escape legal scrutiny of actions of executive?
viii) How inquiry of facts ought to be conducted regarding factual collusion between the members of Opposition Parties and a foreign state?
ix) Whether court can inquire allegation of breach of sovereignty and matter of national security?
x) Whether proceedings in parliament are exempted from judicial scrutiny?
xi) What are substantive & procedural laws?
xii) When court can intervene or enter into domain of executive and legislation?
xiii) What the phrase 'proceedings in parliament' encompasses?
xiv) Whether right of freedom of speech and right to vote of member of NA are subject to any limitation?
xv) Whether requirement of the summoning of the NA under Article 54(3) must be strictly adhered to?
xvi) Whether Article 254 allows the concerned constitutional authority to disregard the time limit set out in any constitutional provision?

xvii) Whether failure of the Deputy Speaker to arrange a discussion on the point of order raised by the Law Minister suffers from any constitutional illegality?
xviii) Whether Article 53 (3) is attracted if speaker refuses to take chair on date when notice of a resolution for removal of speaker has been filed and deputy speaker can act as speaker?
xix) Whether only voting is prescribed as only mean to decide the Resolution of no confidence?
xx) Whether Speaker/Deputy Speaker can avoid voting on the RNC or dismiss the same by a ruling?
xxi) Whether Speaker is not competent to issue a ruling on the interpretation/enforcement of any other provision of the Constitution that has no nexus with the business of the NA?
xxii) How violation of Article 5 is attracted against a citizen?
xxiii) Whether interference of court with ruling of speaker amount to encroachment upon the sovereignty of Parliament?
xxiv) Whether Prime Minister can advise the President to dissolve the National Assembly if a notice has already been given in the NA that a RNC shall be moved against him?
xxv) Whether persons accused of criminal offences can contest and hold elected office?

Analysis:

i) To initiate an RNC a written notice, signed by at least 20% of the total membership of the NA, has to be filed in the NA Secretariat. Thereafter, to move the RNC leave must be granted by 20% of the total membership of the NA and subsequently for the RNC to succeed in removing a Prime Minister, a majority of the total membership of the NA must vote in favour of the resolution.
ii) A matter may be taken up under Article 184(3), either suo motu by the Supreme Court or on the filing of a petition by a party, if it satisfies two conditions: i. It relates to the enforcement of a fundamental right; and ii. It concerns the public at large.
iii) The basic right "to form or be a member of a political party" conferred by Article 17(2) comprises the right of that political party not only to form a political party, contest elections under its banner but also, after successfully contesting the elections, the right to form the Government if its members, elected to that body, are in possession of the requisite majority.
iv) Article 95(4) directs the removal of the Government of a Prime Minister who has lost the support of the total membership of the NA within the political party system on which our parliamentary democracy rests. It must always be remembered that the defeat/removal of a Prime Minister under Article 95 does not preclude the ruling party (or a coalition) from putting forward another candidate for the said office who may succeed in commanding the confidence of the majority of the NA.
v) The fundamental principle that the 'powers and authority' of the State of Pakistan are to be exercised by a Government that is formed, run and maintained

by the support of the majority of the directly elected representatives of the people in the NA functioning within the political party system is permanently entrenched in the Constitution.

vi)The element of public importance is to be determined by the Court with reference to the facts and circumstances of each case [ref: Muhammad Tahir-ul-Qadri Vs. Federation of Pakistan (PLD 2013 SC 413) at para 26(c)]. In the same case the Court also elaborated upon the term 'public' as follows: "26. … (a) The term 'public' is invariably employed in contradistinction to the terms private or individual and connotes, as an adjective, something pertaining to or belonging to the people; relating to a nation, State or community. In other words, it refers to something which is to be shared or participated in or enjoyed by the public at large, and is not limited or restricted to any particular class of the community."

vii) Court has limited jurisdiction to question the Government's decisions on matters of national security. When national security is taken as a defence to sustain a decision by the Government that is prima facie unconstitutional then the Government is under an obligation to substantiate the bona fides of its defence. To do so the Government must produce evidence to demonstrate the defence in order to escape legal scrutiny of its impugned action.

viii) Such an inquiry into facts can, in the first place, be carried out either by a Commission constituted by the Federal Government under the 2017 Act or by a specialized Commission constituted under an Act of Parliament or an Ordinance.

ix) In the absence of evidence prima facie demonstrating the plea of defence of national security and allegation of breach of sovereignty, the Court lacks the jurisdiction to launch into a roving inquiry.

x) It is evident from the provisions of Article 69(1) that the same exempt 'proceedings in Parliament' from judicial scrutiny if these suffer from an 'irregularity of procedure. Article 69(1) of the Constitution and a marked departure was made from the previous law stipulated in the erstwhile Constitutions of 1956 and 1962. The protection now afforded to proceedings in Parliament by Article 69(1) gives cover only to the form and manner of proceedings in the NA, in particular the procedure specified in the NA Procedure Rules that regulates the business of the House. As a result, proceedings that infringe the provisions of the Constitution are no longer protected.

xi) Substantive law creates, defines and regulates rights conferred on persons whereas procedural law provides the machinery that needs to be put in motion for the realisation of these rights.

xii) Courts will ordinarily exercise restraint and not enter into the domains of the Legislature and the Executive, they will intervene when either of these branches overstep their constitutionally prescribed limits.

xiii) It may be observed from the text of Article 66(1) that proceedings in Parliament are essentially comprised of the two basic rights of the members of the NA, namely, the freedom of expression and the right to vote. Free speech and vote relate to the internal functioning of Parliament. These substantive constitutional rights enjoy the double protection of Article 66(1) and Article

69(1). Such supplementary immunity granted to the speech and vote of members of the NA is embedded in the Constitution to ensure the independence of Parliament.

xiv) As set out in the opening words of Article 66(1) these rights are subject to any limitations placed by the Constitution. For instance, the freedom of expression is curtailed by Article 68 (restricts discussion in Parliament regarding the Judges of the Superior Courts) whereas the right to vote in certain matters is circumscribed by Article 63A (disqualification on the grounds of defection).

xv) The constitutional right of the requisite number of members to ask the Speaker to summon the NA in terms of Article 54(3) of the Constitution and the corresponding obligation of the Speaker to do so is a matter of great constitutional importance. Its significance is bolstered by the closing words of the provision, i.e., that when "the Speaker has summoned the Assembly only he may prorogue it". In a system of parliamentary democracy based on political parties, it is, in effect, an invaluable constitutional right conferred on the Opposition. The requirement of the summoning of the NA under Article 54(3) must therefore be strictly adhered to.

xvi) Article 254 is not a general 'escape', that allows the concerned constitutional authority to disregard, as it may please, the time limit set out in any constitutional provision. Rather, it is only intended to be a backstop, when said time limit cannot be adhered to for reasons that must be constitutionally justifiable.

xvii) Rule 17(5) of the NA Procedure Rules grants the Speaker/Deputy Speaker the discretion to hold a debate on a point of order. It does not in any way bind him to hear other members of the NA before announcing his decision. Therefore, the failure of the Deputy Speaker to arrange a discussion on the point of order raised by the Law Minister does not suffer from any constitutional illegality or infirmity.

xviii) Article 260 of the Constitution (definitions) defines the term 'Speaker' to include 'any person acting as the Speaker of the Assembly.' Under Article 53(3) it is only the Deputy Speaker who can act as the Speaker; therefore, it is only logical that Article 260 includes the Deputy Speaker within the term 'Speaker.' Article 53 (3) is attracted if speaker refuses to take chair on date when notice of a resolution for removal of speaker has been filed.

xix) Article 95(2) gives freedom to the NA to choose the day for voting on the RNC. However, the said Article does not allow any freedom regarding the method of deciding the RNC. Voting is prescribed as the only means to do so. The intent of Article 95(2) specifically (and Article 95 generally) is that once an RNC has properly been moved in the NA, voting thereon is a must and cannot be avoided. This view is reiterated by Rule 37 of the NA Procedure Rules which implements the purpose and intent of Article 95.

xx) No special power vests in the Speaker/Deputy Speaker to avoid voting on the RNC. Neither the Constitution nor the NA Procedure Rules vest the Speaker or the Deputy Speaker with any power to dismiss by a ruling an RNC for being inadmissible or non-maintainable. Accordingly, voting by members of the NA on resolutions mentioned in the Constitution, which includes the RNC, cannot be

circumvented by the Speaker or Deputy Speaker.

xxi) It may be noticed from Rule 17(1) that the jurisdiction of the Speaker/Deputy Speaker is confined to interpreting/enforcing the NA Procedure Rules or those Articles of the Constitution that regulate the business of the NA. However, the Speaker is not competent to issue a ruling on the interpretation/enforcement of any other provision of the Constitution that has no nexus with the business of the NA.

xxii) The violation of Article 5 may be attracted against citizens on proof in a Court of Law after confronting with evidence and granting a hearing to the accused party.

xxiii) If the Speaker/Deputy Speaker's interpretation of a constitutional provision is incorrect, the Courts have the jurisdiction to declare so. Essentially, in these circumstances it becomes the duty of the Courts to interfere with the ruling of the Speaker/Deputy Speaker to safeguard and uphold the Constitution. Such a pronouncement of the Court does not encroach upon the sovereignty of Parliament. Rather it reinforces the doctrine of trichotomy of powers under which the Court is entrusted the task of interpreting the Constitution and the law.

xxiv) Explanation to Article 58(1) bars a Prime Minister from advising the President to dissolve the NA if a notice has already been given in the NA that a RNC shall be moved against him. The rationale for the Explanation is self-evident. It restricts the power of a Prime Minister, in whom the confidence of the majority of the members of the NA is under challenge, to prevent his ouster by dissolving the NA and thereby forcing the electorate to go for an early general election.

xxv) The law, including Articles 62 and 63 of the Constitution, the National Accountability Ordinance, 1999 and the Elections Act, 2017 allow persons accused of criminal offences to contest for and hold elected office. It is only upon the conviction of persons accused of such offences that they stand disqualified from contesting an election to a public office or from holding the same.

Conclusion: i) To initiate an RNC a written notice, signed by at least 20% of the total membership of the NA, has to be filed in the NA Secretariat.

ii) Supreme Court can take up matter U/A 184 (3) if i. It relates to the enforcement of a fundamental right; and ii. It concerns the public at large

iii) Article 17(2) encompasses the right of political parties having the requisite majority in the elected Assemblies to form the Government.

iv) Article 95(4) directs the removal of the Government of a Prime Minister who has lost the support of the total membership of the NA within the political party system on which our parliamentary democracy rests.

v) the 'powers and authority' of the State of Pakistan are to be exercised by a Government that is formed, run and maintained by the support of the majority of the directly elected representatives of the people.

vi) The element of public importance is to be determined by the Court with reference to the facts and circumstances of each case.

vii) If national security is taken as defence to escape legal scrutiny of actions of executive the Government must produce evidence to demonstrate the defence in order to escape legal scrutiny of its impugned action.
viii) Such an inquiry into facts can, in the first place, be carried out either by a Commission constituted by the Federal Government under the 2017 Act or by a specialized Commission constituted under an Act of Parliament or an Ordinance.
ix) In the absence of evidence prima facie demonstrating the plea of defence of national security and allegation of breach of sovereignty, the Court lacks the jurisdiction to launch into a roving inquiry.
x) Article 69(1) exempts 'proceedings in Parliament' from judicial scrutiny if these suffer from an 'irregularity of procedure whereas proceedings that infringe the provisions of the Constitution are not protected.
xi) Substantive law creates, defines and regulates rights conferred on persons whereas procedural law provides the machinery that needs to be put in motion for the realisation of these rights.
xii) Courts will ordinarily exercise restraint and not enter into the domains of the Legislature and the Executive; they will intervene when either of these branches oversteps their constitutionally prescribed limits.
xiii) Proceedings in Parliament are essentially comprised of the two basic rights of the members of the NA, namely, the freedom of expression and the right to vote.
xiv) These rights are subject to any limitations placed by the Constitution i.e. Article 68 & Article 63A.
xv) Requirement of the summoning of the NA under Article 54(3) must be strictly adhered to.
xvi) Article 254 is not a general 'escape', that allows the concerned constitutional authority to disregard, as it may please, the time limit set out in any constitutional provision.
xvii) Rule 17(5) of the NA Procedure Rules does not in any way bind him to hear other members of the NA before announcing his decision. Therefore, the failure of the Deputy Speaker to arrange a discussion on the point of order raised by the Law Minister does not suffer from any constitutional illegality or infirmity.
xviii) Article 53 (3) is attracted if speaker refuses to take chair on date when notice of a resolution for removal of speaker has been filed and deputy speaker can act as speaker.
xix) Article 95 does not allow any freedom regarding the method of deciding the RNC. Voting is prescribed as the only means to do so.
xx) Speaker/Deputy Speaker cannot avoid voting on the RNC or dismiss the same by a ruling.
xxi) Speaker is not competent to issue a ruling on the interpretation/enforcement of any other provision of the Constitution that has no nexus with the business of the NA.
xxii) The violation of Article 5 may be attracted against citizens on proof in a Court of Law after confronting with evidence and granting a hearing to the accused party.

xxiii) If the Speaker/Deputy Speaker's interpretation of a constitutional provision is incorrect, the Courts have the jurisdiction to declare so. Such a pronouncement of the Court does not encroach upon the sovereignty of Parliament.
xxiv) Explanation to Article 58(1) bars a Prime Minister from advising the President to dissolve the NA if a notice has already been given in the NA that a RNC shall be moved against him.
xxv) Persons accused of criminal offences can contest and hold elected office it is only upon the conviction of persons accused of such offences that they stand disqualified from contesting an election to a public office or from holding the same.

---

2. **Supreme Court of Pakistan**
Yar Muhammad and another v. Mst. Sameena Tayab and othersv
Civil Appeal Nos. 1009 / 2010 and 933-L / 2013
Mr. Justice Umar Ata Bandial, Mr. Justice Mazhar Alam Khan Miankhel
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1009_2010.pdf

Facts: Through these civil appeals, the appellants have assailed the judgment passed by the High Court whereby the Writ Petition filed by the respondent No.1 was allowed and order of the Member (Colonies), Board of Revenue was set aside.

Issue: Whether review petition against order passed in review is competent?

Analysis: Respondent No.1 challenged an order of review made in favour of petitioners by way of yet another review petition which though was dismissed on merits but the question would be that how a review petition was entertained and considered against an order of review. Legally 2nd review petition was not competent and legally cannot be entertained which under the law should have been dismissed on its very inception.

Conclusion: Second review petition against order passed in review is not competent.

---

3. **Supreme Court of Pakistan**
President, ZTBL, Head Office, Islamabad v. Kishwar Khan and others
Civil Petition No. 419 OF 2020
Mr. Justice Sardar Tariq Masood, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._419_2020.pdf

Facts: Petitioner filed application under Order VII Rules 10 & 11 CPC on the plea that the Civil Court has no jurisdiction to entertain the suit for declaration and injunction with regard to the relationship governed under the rule of master and servant. The learned Civil Judge dismissed both the applications. The petitioner challenged the order before the learned Additional District Judge which was dismissed; thereafter the petitioner filed Civil Revision before the learned High Court, which was also dismissed. Hence, this civil petition for leave to appeal.

Issues: i) What are the conditions of the master and servant relationship?
ii) What remedy is available to the employees for their claims who are neither covered under the Civil Servants Act nor have any statutory remedy or rules or

regulations of service?

iii) What procedure should be adopted by the Court, when the plaint appears from the averments articulated in the plaint to be barred by any law or discloses no cause of action?

iv) What procedure should be adopted by the Court, if it is of the opinion that it has no jurisdiction to entertain the suit?

v) Whether the Civil Courts has the jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred?

Analysis: i) The master and servant is an archaic legal phrase meant to describe the relationship of employer and employee which arises out of an express contract of service which may contain certain terms and conditions agreeable to the parties. The general rule is that the master may hire and fire the services of the servants. The amount of compensation is ordinarily regulated by an agreement.

ii) In case or category of employees who are neither covered under the labor laws nor the Civil Servants Act nor having any statutory rules or regulations of service, they may, due to lack and nonexistence of statutory remedy or statutory rules of service, can only file civil suit for satisfaction of their claims including the damages/compensation for wrongful dismissal. The relationship of master and servant is not meant for mere exploitation.

iii) Order VII Rule 11 CPC enlightens and expounds rejection of plaint if it appears from the averments articulated in the plaint to be barred by any law or disclosed no cause of action. The court is under obligation to must give a meaningful reading to the plaint and if it is manifestly vexatious or meritless in the sense of not disclosing a clear right to sue, the court may reject the plaint.

iv) Order VII Rule 10 CPC provides that the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted. If the Court is of the opinion that it has no jurisdiction to entertain the suit, it is not open to that Court to dismiss the suit on that account, but the Court is required to proceed under Order VII Rule 10 CPC directing that the plaint should be returned to the plaintiff for presentation to the proper Court and on returning a plaint, the Judge must endorse the date of its presentation and return, the name of the party presenting it, with a brief statement of the reasons for returning it.

v) Under Section 9 of C.P.C., the Civil Courts have the jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The ouster of civil court jurisdiction cannot be presumed or anticipated straightforwardly, save as the prerequisites laid down are fulfilled. The presupposition of dearth of jurisdiction may not be embedded until the unequivocal law legislated for debarring civil Court from exercising its jurisdiction.

Conclusion: i) The master and servant relationship is the relationship of employer and employee which arises out of an express contract of service which may contain certain terms and conditions agreeable to the parties.

ii) The employees who are neither covered under the Civil Servants Act nor have any statutory remedy or rules or regulations of service can only file civil suit for satisfaction of their claims including the damages/compensation for wrongful dismissal.

iii) When the plaint appears from the averments articulated in the plaint to be barred by any law or discloses no cause of action, the court should reject the plaint under Order VII Rule 11 CPC.

iv) If the Court is of the opinion that it has no jurisdiction to entertain the suit, the Court should proceed under Order VII Rule 10 CPC directing that the plaint should be returned to the plaintiff for presentation to the proper Court.

v) Yes, the Civil Courts has the jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

---

4. **Supreme Court of Pakistan**
Kashif Aftab Ahmed Abbasi v. Federation of Pakistan through Secretary Establishment Division, Islamabad
Civil Petition No. 419 of 2019
Mr. Justice Sardar Tariq Masood, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._419_2019.pdf

Facts: Petitioner claimed antedated seniority and he preferred a departmental appeal which was rejected, thereafter; he filed service appeal before learned Federal Service Tribunal which was also dismissed. The petitioner seeks leave to appeal against said judgment of learned Federal Service Tribunal.

Issues: i) How date of seniority of members of Police service can be counted?
ii) Whether a particular claim of promotion or seniority is a fundamental right?
iii) Who is required to make out a seniority list of the members?
iv) Whether antedated seniority can be claimed as a vested right?

Analysis: According to Rule 11 of the Police Service of Pakistan (Composition, Cadre & Seniority) Rules, 1985, the members of the Service referred to in clauses (a) and (b) of sub-rule (2) of rule 3 shall retain the same seniority as is shown in the gradation list as it stood immediately before the commencement of these rules. It is inter alia provided in sub-rule (2) that the persons appointed to the Service in accordance with these Rules shall count seniority from the date of regular appointment against a post in Service and according to Rule 5, the initial appointment to the Service against cadre posts in basic Grade 17 is to be made on the basis of the results of the competitive examinations held for the purpose by the Commission. Whereas in sub-rule 2 it is clearly mentioned that unless the appointing authority in any case otherwise directs, a person appointed to the Service under sub-rule (1) shall be appointed to the Service as a probationer in accordance with the rules which the Federal Government may make from time to time, including rules and orders relating to training during probation, and shall be required to undergo such departmental training and pass such departmental

examinations as may be specified by the Federal Government or the Government of the Province to which he is allocated.

ii) The law is somewhat and moderately well settled in series of dictums of superior Courts highlighting the conspectus that a particular claim of promotion or seniority is not a fundamental right and a person is disentitled to claim seniority from a date he was not borne or take on in the service. In the philosophy or jurisprudence of service laws, no one has a vested right to a particular promotion or particular seniority but it is always governed and regulated in accordance with the applicable rules and regulations with a venue of consideration for progression including the fixation of seniority in line with the criteria provided under the applicable rules and such consideration can only be invited if all requisite conditions or preconditions are fulfilled by such claimant enabling him to join the queue or stand in line.

iii) In order to streamline the proper administration of a service, cadre or post, the appointing authority is required to make out a seniority list of the members, but no vested right is conferred to a particular seniority in such service, cadre or post.

iv) Antedated seniority cannot be claimed as a vested right.

Conclusion: i) According to Rule 11 of the Police Service of Pakistan (Composition, Cadre & Seniority) Rules, 1985, date of seniority of members of Police service can be counted.

ii) A particular claim of promotion or seniority is not a fundamental right.

iii) The appointing authority is required to make out a seniority list of the members.

iv) Antedated seniority cannot be claimed as a vested right.

---

5. Supreme Court of Pakistan
Raja Zahoor Ahmed etc v. Capital Development Authority through its Chairman, etc. (In all cases)
Civil Petitions No.3347 to 3351, 4229 and 4263 of 2021.
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3347_2021.pdf

Facts: The Board of directors of Capital Development Authority commercialized the residential properties of petitioners but soon Board realized that decision is in violation of the Master Plan of Islamabad, therefore, the Board through a fresh order rescinded its earlier order. Subsequently, the CDA issued notices to the petitioners for non-conforming use of their properties. These notices were challenged by them, claiming in their writ petitions that their residential properties stood commercialized. Additionally, other petitioners filed civil suits seeking declaration that their properties had acquired commercial character. The applications under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure filed along with the suits were dismissed by the Trial Court; appeals also met the same fate; and, then, civil revisions were preferred before the High Court. The High Court through the impugned consolidated judgment dismissed the writ

petitions and civil revisions filed by the petitioners. The petitioners now seek leave to appeal against said judgment of the High Court.

Issues: Whether Capital Development Authority (CDA) has power to accord any permission for change of status or use of property in breach of Master Plan of Islamabad?

Analysis: The Capital Development Authority Ordinance 1960 ("Ordinance") was enacted to establish the CDA for the purpose of making all arrangements for the planning and development of Islamabad. The CDA was required to prepare a master plan and a phased master programme for the development of the 'Capital Site' and a similar plan and programme for the rest of the 'Specified Areas'. All such plans and programmes were required to be submitted to the Federal Government for approval. Any scheme prepared relating to land use, zoning and land reservation, among other things, is required to be in pursuance of the Master Plan and CDA has no discretionary power to give effect to any scheme or accord any permission for change of status or use of property in breach of the Master Plan. The Master Plan is protected under the Ordinance and the Ordinance obliges the CDA to regulate the use of land pursuant to the Master Plan. The prohibition contained against the use of land for a purpose other than the one specified in the Master Plan is absolute. The Master Plan can only be amended with the approval of the Federal Government.

Conclusion: CDA has no discretionary power to give effect to any scheme or accord any permission for change of status or use of property in breach of the Master Plan of Islamabad.

---

6. Supreme Court of Pakistan
Allah Wasaya v. The State, etc.
Crl. P. 440/2022
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._440_2022%20.pdf

Facts: The petitioner sought leave to appeal against the order whereby post-arrest bail was denied to him in case registered for offences punishable under Sections 336, 334, 367, 354, 342, 148 & 149 of PPC.

Issues: i) What is meaning and scope of phrase "hardened, desperate or dangerous criminal"?
ii) Whether it is necessary to prove the previous criminal record of conviction of accused in order to bring him within compass of hardened, desperate or dangerous criminal?

Analysis: i) The words "hardened, desperate or dangerous" point towards a person who is likely to seriously injure and hurt others without caring for the consequences of

his violent act and can pose a serious threat to the society if set free on bail.

ii) In order to bring an accused within the compass of a hardened, desperate or dangerous criminal, it is not necessary to prove that he has a previous criminal record of conviction. It is obvious that the previous criminal record of convictions or of pendency of other criminal cases, though may be taken into consideration as a supporting material, is not an exclusive deciding factor to form an opinion as to whether the accused is a hardened, desperate or dangerous criminal. Such an opinion is to be formed by the court mainly on basis of the facts and circumstances of the case, borne out from the material available on record, wherein the bail is applied on the ground of delay in conclusion of the trial, by considering inter alia, the nature of the offence involved, its effects on the victims or the society at large, the role attributed to the accused, the manner in which the offence was committed and the conduct of the accused.

Conclusion: i) The words "hardened, desperate or dangerous" point towards a person who is likely to seriously injure and hurt others without caring for the consequences of his violent act and can pose a serious threat to the society if set free on bail.

ii) The court may also refer to any previous criminal record, if available, for forming such opinion but it matters little if the accused does not have a previous criminal record. The very gravity and severity of the act alleged to have been committed by the accused even though for the first time, may be sufficient and may lead the court to form opinion that the accused is a hardened, desperate or a dangerous criminal.

---

7. Supreme Court of Pakistan
Muhammad Rafique v. The State, etc.
Criminal Petition no. 301/2022
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._301_2022.pdf

Facts: The petitioner sought cancellation of post arrest bail of one of the respondents in case FIR registered for offences punishable under Sections 302, 324, 337 F(v), 337 F(i), 337 A(i), 337 A(ii)341, 148 and 149 PPC.

Issues: Whether mere existence of a cross-version can be a valid ground for holding a case one of further inquiry to grant bail under Section 497(2) Cr.PC?

Analysis: The well-settled principle of law as to the effect of a cross-version of the occurrence involved in a case, at bail stage, is that mere existence of a cross-version is not a valid ground for holding the case one of further inquiry to grant bail under Section 497(2) Cr.PC, unless it is supported by the material available on record of the case and on tentative assessment of that material, the court either finds it *prima facie* true or remains unable to determine even tentatively which one of the two versions is *prima facie* true. It is in the latter situation where the court remains unable to determine even tentatively,

which one of the parties is aggressor and which one is aggressed upon, that the case against both parties falls within the scope of further inquiry under Section 497(2), Cr.PC….. If the courts start considering every case involving a cross-version as one of further inquiry without any tentative assessment of the worth of the cross-version, it can encourage an accused to concoct a false or fabricated cross-version so as to bring his case within the ambit of further inquiry and thereby get bail.

Conclusion: Mere existence of a cross-version cannot be a valid ground for holding a case one of further inquiry to grant bail under Section 497(2) Cr.PC.

---

8. **Lahore High Court**
Zainab Umair v. Election Commission of Pakistan & others
Writ Petition No.34648 of 2022
Samuel Yaqoob & another v. Election Commission of Pakistan & others
Writ Petition No.34645 of 2022
Mr. Justice Shahid Waheed
https://sys.lhc.gov.pk/appjudgments/2022LHC4802.pdf

Facts: Through two constitutional petitions, the petitioners challenged the consolidated order of Election Commission of Pakistan ("ECP") on three different applications in which the Election Commission of Pakistan deferred the filling of the vacant reserved seats till the outcome of bye-election on general seats in the Punjab Provincial Assembly which became vacant on account of defection. The matter directly and substantially in issue excited the construction of the provisions of the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution") about the procedure of filling the seats reserved for women and non-Muslims in the Provincial Assembly, Punjab.

Issues: i) Whether the reserved seats for women and non-Muslims in the Assembly won by each political party on the basis of general seats in a general election are subject to change on account of subsequent increase or decrease in general seats of a political party in the Assembly due to death, resignation or disqualification of members of a political party?
ii) Whether after commencement of the term of the Provincial Assembly or in its last year subsequent variation in the strength of general seats of a political party means that the quota of reserved seats of that party will be re-fixed and if it is reduced then the members elected to the reserved seats will have to be automatically de-seated?
iii) How the expression "whose member has vacated such seat" mentioned in Article 224(6) of the Constitution should be interpreted?
iv) Whether defection amounts to disqualification as per Article 63 of the Constitution and the procedure prescribed in Article 224(6) can be resorted to filling the vacant reserved seats?

Analysis: i) A conjoint reading of Article 106(3)(c) and Article 224(6), suggest three things, that is to say, firstly, calculation of quota for the seats reserved for women and non-Muslims shall be made on the basis of the total number of general seats secured by each political party in the general election to the Provincial Assembly, secondly, the members to fill seats reserved for women and non-Muslims shall be elected through proportional representation system of political parties' lists of candidates, and thirdly, when a seat reserved for women or non-Muslims in a Provincial Assembly falls vacant, on account of death, resignation or disqualification of a member, it shall be filled by the next person in order of precedence from the party list of the candidates, submitted to the ECP in terms of Article 106(3)(c)upon the compilation of the results of general seats secured by each political party in the general election, whose member has vacated such seat. So, the mention of these three things in clear terms in the Constitution necessarily implies that due to subsequent variation in the strength of the political party on the general seats, the recount or recalculation of quota at any later stage is excluded.

ii) The principle of retrenchment does not apply to members of the Assembly, nor does the Constitution support the idea that any member should be de-seated before the end of the tenure of the Provincial Assembly when he or she does not exhibit any of the conduct that falls under Article 63 or 63A of the Constitution, and, any subsequent variation in the strength of general seats of a political party cannot be allowed to be made a basis to change it, otherwise, it will create a constitutional imbalance.

iii) The expression "whose member has vacated such seat" mentioned in Article 224(6) of the Constitution is a sinew of Article 106(3)(c) of the Constitution, and for the situation with which we are confronted here, its use provides us a solid foundation to suggest a complete pragmatic answer to the question under consideration, that is, once the quota of reserved seats is determined after every general election, it becomes indissoluble for the whole tenure of the Assembly, secondly, any subsequent change in the total number of general seats won by a political party will be inconsequential to fill the vacant reserved seats, and thirdly, it will be a ministerial function of the ECP, of course, subject to compliance with certain formalities of law by the candidate, to fill the vacant reserved seats from the party list of the candidates submitted to it by the political party whose member has vacated such seat.

iv) Article 224(6) of the Constitution indeed talks about the seats that fall vacant on account of disqualification, but by any means, it does not mean that it envisages only that disqualification that has been enumerated in Article 63 of the Constitution…..It is a matter of fact that the word disqualification is not defined in the Constitution, and thus, it must be given simple, natural, general, and grammatical meaning consistent with the purpose of the Constitution and also to bring harmony in its all clauses. It is common knowledge that the word disqualification is a noun and it simply means the act of preventing somebody from doing something because he has broken a rule or is not suitable. The use of

this plain meaning makes it clear that a person stands disqualified to act as a member of the Assembly either on the basis of matters listed in Article 63 of the Constitution or on the ground of defection provided in Article 63A of the Constitution. So, it can be safely concluded that when a reserved seat becomes vacant on account of any kind of above-stated disqualifications, it shall be filled in accordance with the procedure laid down in Article 224(6) of the Constitution.

Conclusion: i) The reserved seats for women and non-Muslims in the Assembly won by each political party on the basis of general seats in a general election are not subject to change on account of subsequent increase or decrease in general seats of a political party in the Assembly due to death, resignation or disqualification of members of a political party.

ii) After commencement of the term of the Provincial Assembly or in its last year subsequent variation in the strength of general seats of a political party does not mean that the quota of reserved seats of that party will be re-fixed and if it is reduced then the members elected to the reserved seats will have to be automatically de-seated.

iii) The expression "whose member has vacated such seat" mentioned in Article 224(6) of the Constitution is interpreted in such a way that it means to fill the vacant reserved seats from the party list of the candidates submitted to it by the political party whose member has vacated such seat.

iv) Defection amounts to disqualification as per Article 63 of the Constitution; hence the procedure prescribed in Article 224(6) can be resorted to filling the vacant reserved seats.

---

9. **Lahore High Court**
Mst. Shahnaz Shafiq and 2 others v. Mst. Gulnar Khalid and 4 others
Civil Revision No.19610 of 2021
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC4828.pdf

Facts: Respondent No.1 instituted a suit for declaration against the present petitioners and remaining respondents No.2 to 5 in the present revision petition. The petitioners also instituted a suit for declaration with permanent injunction against the respondents whereby the petitioner No.1 sought cancellation of gift deed. The respondent No.2 also filed a separate suit in this regard. The instant revision petition as well as connected C.Rs. called into question the validity and vires of impugned orders rejecting the plaints of suits instituted by the present petitioners and respondent No.2 and decreeing the suit of the respondent No.1.

Issues: i) Whether court may pass judgment on admission of gift by donor?
ii) Whether civil court can declare a person as "mentally disordered person"?

Analysis: i) On admission of gift by donor through statement recorded in a categorical, unambiguous and in a vivid way, the Court, on moving an application under

Order XII, Rule 6 read with Order XV, Rule 1, Code of Civil Procedure, 1908, in exercise of discretion, vested upon it, may pass a judgment or order, as it thinks fit.

ii) In case law reported as **Arshad Ehsan v. Sheikh Ahsan Ghani and 2 others (PLJ 2007 Lahore 144)**, this Court has held:- 'There is no cavil to the proposition that the only forum competent to declare a person as "mentally disordered person" is one available under Mental Health Ordinance, 2001 and the same has overriding effect and no other Court could determine or for that matter grant any declaration…'

Conclusion: i) On admission of gift by donor the Court, on moving an application under Order XII, Rule 6 read with Order XV, Rule 1, Code of Civil Procedure, 1908, in exercise of discretion, vested upon it, may pass a judgment or order, as it thinks fit.

ii) Only forum competent to declare a person as "mentally disordered person" is one available under Mental Health Ordinance, 2001 and the same has overriding effect and no other Court could determine or for that matter grant any declaration.

---

10. **Lahore High Court**
Bashir Ahmed v. Mohammad Nadeem, etc.
C.R.No.258/2010
Mr. Justice Ch. Muhammad Masood Jahangir
https://sys.lhc.gov.pk/appjudgments/2021LHC9853.pdf

Facts: Through the instant Civil Revision, the petitioner/defendant has challenged the concurrent decisions of the fora below wherein the suit for declaration & permanent injunction of the respondent seeking ownership and possession of specific area on the basis of registered sale deed was decreed.

Issues: i) Whether an owner of joint holding can alienate specific portion of land in his possession without regular partition under the law?

ii) Whether any improvement made over a specific part of common property before regular partition makes the occupier its absolute owner and the rights of the other co-sharers extinguish?

iii) What is the scope of interference of the High Court with concurrent findings of facts u/s 115 of the CPC?

Analysis: i) Although an owner of joint holding can alienate specific portion out of it in his possession and the vendee in such situation can retain its possession as well, yet only till regular partition under the law takes place. In joint holding, the vendee also became co-sharer along with the other co-sharers & the vendor, who being interested had a right in joint holding irrespective of its quantity because no regular partition ever effected among them.

ii) Even any improvement made over a specific part of common property does not mean that occupier thereof has become its absolute owner or the rights of the other co-sharers are extinguished because characteristic of joint ownership is to

prevail until & unless partition takes place by metes & bounds.
iii) Although, the scope of interference with concurrent findings of fact is limited, but those can be interfered with by this Court u/s 115 of the Code, 1908, if fora below appeared to have either misread material on record or while assessing it had omitted from consideration some important piece of evidence, which had direct bearing on the issue involved.

Conclusion: i) An owner of joint holding can alienate specific portion of land in his possession without regular partition and the vendee in such situation can retain its possession as well, yet only till regular partition under the law takes place.
ii) Any improvement made over a specific part of common property before regular partition does not makes the occupier its absolute owner and the rights of the other co-sharers also do not extinguish.
iii) Although, the scope of interference of the High Court with concurrent findings of facts u/s 115 of the CPC is limited, but those can be interfered with, if fora below appeared to have either misread material on record or while assessing it had omitted from consideration some important piece of evidence, which had direct bearing on the issue involved.

---

11. Lahore High Court
Syed Mubarak Hussain Shah v. Syed Muhammad Ayub Shah*(deceased)* through L.Rs.
Civil Revision No.301-D-2014
Mr. Justice Ch. Muhammad Masood Jahangir
https://sys.lhc.gov.pk/appjudgments/2022LHC4767.pdf

Facts: The petitioner has challenged the judgment of the appellate court whereby it reversed the findings of the trial court and decreed the suit of the respondent for declaration and cancellation.

Issues: i) How a registered document whose construction is doubted or questioned is to be proved?
ii) Whether a statement of a witness can be read in isolation?
iii) How a document executed on behalf of a feeble, weak and old person is to be proved?
iv) Whether mere admission *qua* affixing of signature is enough proof about due execution of a document?
v) Whether limitation runs against a document proved to be result of fraud or misrepresentation?
vi) In case of conflict in the findings of trial court and lower appellate court *inter se*, which findings are to be preferred?

Analysis: i) *Per* spirit of Article 85 of the Qanun-e-Shahadat Order, 1984,only registered instrument, the execution whereof was never denied, falls within the category of public document and the one, whose construction is doubted or questioned,

then *sine qua non* for the beneficiary to prove it *per* modes prescribed for the proof of private document…. The Superior Courts of the land so far are unanimous that mere attestation of a document, its exhibition or even proof of due construction thereof are not enough for the beneficiary of registered instrument, rather much important for him is to fallout the basics of the transaction for which it was executed.

ii) Statement of a witness is to be considered as a whole so that it can be appreciated *per* its essence/crux and obviously cannot be read in isolation, so as to disbelieve or disregard his testimony while picking up some of its sentences.

iii) Where the plaintiff/executant of a document was much advanced age person, who was not accompanied by some independent advice at the time of execution of a document then in such situation, *sine qua non* for the defendant/beneficiary to prove that plaintiff was fully cognizant and aware of the import of transaction. Even demand of law should be that any document executed on behalf of feeble, weak & old person, if disputed, has to be proved with more inspiring, consistent & strong evidence, otherwise in such like situation, the possibility of exerting undue influence cannot be ruled out.

iv) *Per* spirit of Article 78 of the Order *ibid*, due execution of document can be proved by examining its executant or those, who signed/thumb marked it being marginal witnesses or the one who scribed it. However, execution of a document is not restricted only to prove that the same bore signatures of those, who appeared in the witness-box, but it is to be established that in presence of the parties accompanied by number of witnesses, the instrument on asking of the executant with consent of the beneficiary was written and prior to affixing thumb impression in presence of the witnesses, it was read over for understanding to them.

v) Any document, which is proved to be result of misrepresentation or fraud cannot be protected as it vitiates even most solemn proceedings. Therefore in such a case a suit instituted beyond limitation cannot be regretted.

vi) There is also no cavil that in case of conflict *inter se* the judgments of a Trial Court and a lower Appellate Court, the findings of the latter in the absence of any cogent reason to the contrary must be given preference when there is no irregularity or illegality as well as mis-reading/non-reading of evidence and jurisdictional defect committed by said lower Appellate Court.

Conclusion: i) A registered document whose construction is doubted or questioned is to be proved by its beneficiary *per* modes prescribed for proof of private document.

ii) A statement of a witness cannot be read in isolation.

iii) A document executed on behalf of a feeble, weak and old person is to be proved with more inspiring, consistent and strong evidence.

iv) A mere admission *qua* affixing of signature is not enough proof about due execution of a document.

v) Limitation does not run against a document proved to be result of fraud or misrepresentation.
vi) In the absence of any cogent reason to the contrary, the findings of lower appellate court are to be preferred over trial court in case of conflict *inter se*.

---

12. **Lahore High Court**
Ehsan Ullah, etc. v. The Federation of Pakistan, etc.
W. P. No. 63221 of 2020.
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC5600.pdf

Facts: The petitioner through instant writ petition has challenged summons purportedly issued under Section 21 of Benami Transactions (Prohibition) Act, 2017 vide which petitioner is asked for a statement and affidavits, regarding properties mentioned therein, which are suspected to be "benami properties"[Section 2(7)] and petitioner as a "benamidar" [Section 2(9)].

Issues: i) What are criteria for treating a property as benami property and its confiscation?
ii) Whether Sections 3 to 5 & 18 of Benami Transactions (Prohibition) Act, 2017 authorize for calling any information from the suspected benamidar or beneficial owner?
iii) Whether section 21 of Benami Transactions (Prohibition) Act, 2017 authorizes issuance of notice to benamidar for submission of affidavit?
iv) When owner of property can be associated/confronted in proceedings under the Act of 2017?
v) How proceedings ought to be initiated against the benamidar?
vi) Whether summons can be issued at initial stage under the Act of 2017 and in particular u/s 21?

Analysis: i) For prohibition of holding a benami property and its confiscation, it must fall within the definitions under section 2 of Benami Transactions (Prohibition) Act, 2017. In nutshell, the consideration should be provided by a person other than the one in who's name the property is and it should be held for benefit of person providing the consideration or another person.
ii) Sections 3 to 5 and 18 of Benami Transactions (Prohibition) Act, 2017 of do not authorize for calling any information from the suspected benamidar or beneficial owner. Any other person, envisaged in section 18 of Benami Transactions (Prohibition) Act, 2017, is a third person, if information in his possession, regarding any other person, point or matter, is useful or relevant for the purpose of this Act.
iii) The provisions of section 21 are giving power to conduct or cause to be conducted any inquiry or investigation in respect of any person, place, property assets, documents etc. This power is contingent with prior approval of the Approving Authority. Nothing is mentioned regarding issuance of notice to

benamidar, asking to give statement or affidavit to the effect that the property is not benami.

iv) The owner of the property can only be associated/confronted in the proceedings under the Act of 2017 on the basis of material in possession of the initiating officer, who has reasons to believe that the person, being issued notice, is a benamidar in respect of the property.

v) A show cause notice is envisaged, which appears to be a first official interaction with the benamidar. The property is not out rightly attached, but the benamidar is to be asked to show why the property be not treated as benami property. The show cause notice must disclose reasons, based on the material, available after calling information under the Section 18 and during inquiry/ investigation under the Section 21 that too after getting approval.

vi) At initial stage, „SUMMONS" are not envisaged in the Act of 2017 and in particular under Section 21. It can neither be termed as notice under Section 22. After insertion of Article 19A read with 10A in the Constitution, it is fundamental right of a person proceeded against, under the law (Article 4), that information regarding mandatory proceedings and necessary information/material, requiring action under the law, is dully provided and confronted in the show cause notice. Any notice proposing legal action under the law, is not enforceable, if it lacks the mandatory details.

Conclusion: i) For treating a property as benami property and its confiscation, the consideration should be provided by a person other than the one in who's name the property is and it should be held for benefit of person providing the consideration or another person.

ii) Sections 3 to 5 and 18 of Benami Transactions (Prohibition) Act, 2017 do not authorize for calling any information from the suspected benamidar or beneficial owner.

iii) Nothing is mentioned in section 21 of Act of 2017 regarding issuance of notice to benamidar, asking to give statement or affidavit to the effect that the property is not benami.

iv) The owner of the property can only be associated/confronted in the proceedings under the Act of 2017 on the basis of material in possession of the initiating officer, who has reasons to believe that the person, being issued notice, is a benamidar in respect of the property.

v) A show cause notice is envisaged, which appears to be a first official interaction with the benamidar which must disclose reasons, based on the material, available after calling information under the Section 18 and during inquiry/ investigation under the Section 21 that too after getting approval.

vi) At initial stage, "SUMMONS" are not envisaged in the Act of 2017 and in particular under Section 21.

---

13. Lahore High Court
The Commissioner Inland Revenue, Multan Zone v. Muhammad Iqbal Rind & Sons D.G. Khan
Income Tax Reference No.02 of 2018
Mr. Justice Shahid Karim, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2022LHC4885.pdf

Facts: Respondent/taxpayer filed income tax return. On the examination of record, Additional Commission Inland Revenue found the declared result erroneous in so far as prejudicial to interest of revenue. Taxation Officer issued notice u/s 122(5) of the ordinance but respondent did not file reply. After obtaining the relevant record of taxpayer, Taxation Officer amended the assessment. The respondent filed appeal before CIR (Appeals) which was allowed resulting in annulment of amended assessment. Applicant filed appeal before ATIR which was dismissed. Hence, this tax reference has been filed.

Issues: i) What are conditions for making amendment in assessment u/s 122 (5A) of Ordinance 0f 2001?
ii) When an assessment order can be said erroneous?
iii) Whether every loss of revenue as a consequence of an Assessment Order can be treated as prejudicial to the interest of revenue?
iv) Whether notice u/s 111(1) of ordnance 2001 is mandatory prerequisite prior to changing the tax liability of taxpayer regarding different transactions?

Analysis: i) An amendment of assessment under u/s 122 (5A) can be made only in cases where twin conditions namely, (i) the Assessment Order is erroneous; and (ii) it is prejudicial to the interest of revenue, are satisfied. If one of these pre-requisites is absent i.e. if the Assessment Order is not erroneous but prejudicial to the revenue or if it is erroneous but not prejudicial to the revenue, recourse cannot be had to the said section. There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error in the Assessment Order.
ii) An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being 'erroneous'.
iii) The phrase 'prejudicial to the interest of revenue' has to be read in conjunction with an erroneous Assessment Order. Every loss of revenue as a consequence of an Assessment Order cannot be treated as prejudicial to the interest of revenue. For examples, when an Assessment Order is based on one of the courses permissible in law and it has resulted in a loss of revenue or where two views are possible and the view taken in the Assessment Order is the one with which the commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of revenue unless the view taken in the Assessment Order is unsustainable in law.
iv) Before treating different transactions of taxpayers liable to tax differently from deemed assessment, issuance of a notice under Section 111(1) of the Ordinance was a mandatory prerequisite to seek explanation of the taxpayer against

separation of alleged transactions, any amount chargeable to tax or of any item of receipt liable to tax and where no such explanation is offered by the taxpayer, an order under Section 111(1) of the Ordinance can be passed and on the basis thereof a notice under Section 122(5) of the Ordinance for the amendment of assessment can be issued and decided.

Conclusion: i)) An amendment of assessment under u/s 122 (5A) can be made only in cases where twin conditions namely, (i) the Assessment Order is erroneous; and (ii) it is prejudicial to the interest of revenue, are satisfied.
ii) An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being 'erroneous'.
iii) Every loss of revenue as a consequence of an Assessment Order cannot be treated as prejudicial to the interest of revenue
iv) Notice u/s 111(1) of ordnance 2001 is mandatory prerequisite prior to changing the tax liability of taxpayer regarding different transactions.

---

14. Lahore High Court
Muhammad Khurram Butt v. Sheikh Asfandyar Siddique
Civil Revision No. 368 of 2022
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2022LHC4893.pdf

Facts: The petitioner filed an ejectment petition under Section 19 of the Punjab Rented Premises Act, 2009 which was accepted. The respondent preferred an appealwhich was dismissed however his writ Petition was accepted and the matter was remanded to the trial court. Meanwhile the possession of the disputed premise was taken from the respondent in the execution proceedings. Respondent moved an application under Section 144 CPC which was dismissed by the trial court but accepted by appellate court, hence this petition.

Issues: Whether restitution of possession of a property cannot be reclaimed where possession was taken over in satisfaction of execution proceedings?

Analysis: It is thus manifestly clear from section 144 CPC that where and in so far as a decree is varied or reversed, the Court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed….The doctrine of restitution undoubtedly based upon the maxim *"actus curiae neminem gravabit"* which contemplates that no one should be prejudiced by an act of the court. It is an oft repeated principle of law that whenever a property has been received under the order of the court which later on was reversed or varied, the possession so obtained becomes wrongful….After setting aside of eviction order by this Court in the constitutional petition, the

respondent has every right to seek restitution of possession taken from him in the execution proceedings in pursuance to the said order.

Conclusion: Restitution of possession of a property can be reclaimed even if the possession was taken over in satisfaction of execution proceedings.

---

15. **Lahore High Court**
Khursheed Ahmad, etc. v. Province of Punjab through Collector District Chakwal, etc.
W.P.No.500 of 2022
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2022LHC5004.pdf

Facts: The petitioners being landowners through this constitutional petition challenged the notification under Section 4 of the Land Acquisition Act, 1894 on the ground of mala fide issued on 21st December, 2021 to acquire land measuring 758-Kanal 3-Marla for the construction of 500 KV Grid Station.

Issue: i) Whether in a matter based on ground of mala fide, it is necessary for the petitioner to plead all the facts which establishes the mala fide in act of a public functionary?

ii) Whether District Collector has the power to denotify the acquisition proceedings?

Analysis: i) Mala fide is always a question of fact. In ordinary parlance, mala fide cannot be attributed to the Executive/ Government functionary performing functions in furtherance of a legal mandate. In absence of any cogent and convincing material in support of plea of mala fide, it shall be presumed that the act taken by the Executive/ Government functionary in pursuance to a lawful mandate is not tainted with mala fide. The petitioner when once challenge the impugned action on the basis of mala fide, he is bound to plead the fact resulting into mala fide in a specific manner. Mala fide is one of the most difficult things to prove.

ii) Issuance of notification under section 4 of the "Act, 1894" is though first step towards the acquisition but it is a move which relates to preacquisition proceedings. The act of acquisition would only mature when the Collector takes an order for the acquisition of the land in terms of Section 7 of the "Act, 1894", so, Section 48 of the "Act, 1894" would only become applicable when a declaration for acquisition is made under Section 7… Notification under Section 4 of the "Act, 1894" falls within the competence of the Collector of the District when the Collector is empowered to issue the notification, he is also competent to denotify the same in terms of section 21 of the General Clauses Act, 1897.

Conclusion: i) In a matter based on ground of mala fide, it is necessary for the petitioner to plead all the facts which establishes the mala fide in act of a public functionary.

ii) When the Collector is empowered to issue the notification, he is also competent to denotify the same in terms of section 21 of the General Clauses Act, 1897.

---

16. **Lahore High Court**
Hayat (Deceased) Through L.Rs., etc. v. Mst. Fateh Khatoon
C.R.No.495-D of 2013
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2022LHC5316.pdf

Facts: The respondent purportedly gifted her immovable property to the petitioner which was challenged by her through civil suit and suit was decreed. The petitioner preferred appeal which was dismissed. Feeling aggrieved, the petitioner filed this civil revision.

Issues: i) Whether mere non framing of an issue by the court affects vires of the judgment?
ii) Whether a minor can enter into any contract?
iii) When period of limitation can be reckoned in case of disability?

Analysis: i) Even otherwise, mere non-framing of an issue by the Court will not affect the vires of the judgment if it is established that the parties while leading their evidence were well conscious and aware of the matter in issue and they have led the relevant evidence to that effect.
ii) In terms of section 3 of the Majority Act, 1875, every child having less than age of eighteen years is deemed to be minor. Section 11 of the Contract Act, 1872 ordains that every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject. In other words, it can be said without any hint of doubt that a minor cannot enter into any contract. Chapter 11 of Muhammadan Law by Dinshah Farduji Mullah (D.F. Mulla's) deals with the gifts. Para-139 postulates that every Muhammadan of Sound mind and not a minor may dispose of his property by gift.
iii) It is observed that in terms of Section 6 of the Limitation Act, 1908, where a person entitled to institute a suit or proceeding or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or proceeding or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the First Schedule or in section 48 of the "CPC"

Conclusion: i) Mere non-framing of an issue by the Court will not affect the vires of the judgment.
ii) A minor cannot enter into any contract.
iii) Period of limitation can be reckoned after the disability has ceased.

---

17. **Lahore High Court**
Commissioner Inland Revenue, Lahore v. Coca Cola Pakistan Limited, Lahore
PTR No.349 of 2010

Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC4794.pdf

Facts: The respondent taxpayer filed income tax return which was taken as deemed assessment u/s 120 of ordinance of 2001. Subsequently, proceedings u/s 122(5) of ordinance 2001 initiated, which culminated into passing of amended assessment order. Feeling aggrieved, respondent taxpayer filed appeal before CIT (appeals), which was disposed of. Feeling dissatisfied, respondent filed second appeal before Appellate Tribunal which was accepted. Hence instant reference application.

Issues: i) Whether amount paid in consideration for acquiring rights for exclusive sale of brand product comes within expression of "services" or "royalty"?
ii) Whether deduction of tax can be allowed for only rebate when no actual payment being made?
iii) Whether apportionment of expenditures u/s 67 ought to be made on the basis of "turnover" or "gross profit"?
iv) Whether Rule 13(3) of the Rules of 2002 is mandatory in nature?
v) Whether Rule 13 of Rules of 2002 is beyond the mandate of Section 67 of Ordinance of 2001?
vi) When delegated legislation can be struck down?
vii) What is question of law for the purpose of reference u/s 133 of Ordinance of 2001?
viii) Whether High Court can strike down a provision of law or declare it ultra vires of the Constitution in reference jurisdiction u/s 133 of Ordinance of 2001?

Analysis: i) For invocation of provisions of Section 153(1)(b) of the Ordinance of 2001, it is necessary to comprehend the scope of expression "services" used therein. Every payment cannot be presumed to come within the scope of aforesaid term "services" because such latitude would defeat and overlap other services within the contemplation of the Ordinance of 2001. The consideration of acquisition of exclusive rights, by its nature, does not come within the expression of "services" as used in Section 153(1)(b) rather comes within the ambit of "royalty" defined in Section 2(54) of the Ordinance of 2001. There is no ambiguity that the rebate is a reduction against sale consideration and hence, could not be equated with consideration for services simply for the reason that buyers of goods do not render any service to the seller.
ii) As per provisions of Section 153 of ordinance 0f 2001, a registered person is only required to deduct tax at the time of making payment to a resident person etc., however, when the payment is not being actually, physically or practically made, possibility of deduction of tax does not arise at all. Therefore, it is absolutely impracticable and impossible to deduct a certain amount from an amount which was not being paid.
iii) Section 67 of the Ordinance provides mechanism for apportionment of expenditures, with respect of class or classes of income, as classified therein.

Section 67(2) of the Ordinance of 2001 authorizes the FBR to make rules for adopting such reasonable basis and Rule 13(3) of the Rules of 2002, devises a formula for apportionment of common expenditures according to gross receipts.

iv) Rule 13(3) of the Rules of 2002 is mandatory in nature.

v) Rules are subordinate and delegated legislation, deriving authority and legal cover from the provisions of the main statute and cannot override the provisions of the Statute. Rule 13 has been framed by deriving authority from Section 67 and the Rule is advancing the purpose of aforesaid provision of the parent statute and there appears no inconsistency between them.

vi) Rule of interpretation is that delegated legislation can only be struck down if it is directly repugnant to general purpose of the statute which authorized it or is repugnant to well established principle of statute.

vii) A reference under section 133 of the Ordinance of 2001, lies before this Court on a question of law only and the Court is obliged to answer the same in accordance with a rule of law. A question of law means a question as to what the law is on a particular point, which provision of law is applicable to a particular factual situation and what the true rule of law is on a certain matter.

viii) In reference jurisdiction, High Court cannot either strike down a provision of law or declare it ultra vires of the Constitution. Any person desirous of a declaration of the kind can very well approach the Court in Constitutional jurisdiction. While exercising reference jurisdiction, High Court confines itself to the questions framed / proposed and gives an opinion in the perspective of the facts as found by the Tribunal and to enter upon the constitutionality of a particular provision is not at all required in such matters.

Conclusion: i) The consideration of acquisition of exclusive rights, by its nature, does not come within the expression of "services" as used in Section 153(1)(b) rather comes within the ambit of "royalty" defined in Section 2(54) of the Ordinance of 2001.

ii) It is absolutely impracticable and impossible to deduct a certain amount from an amount which was not being paid.

iii) Section 67(2) of the Ordinance of 2001 authorizes the FBR to make rules for adopting such reasonable basis and Rule 13(3) of the Rules of 2002, devises a formula for apportionment of common expenditures according to gross receipts.

iv) Rule 13(3) of the Rules of 2002 is mandatory in nature.

v) Rule 13 of Rules of 2002 is not beyond the mandate of Section 67 of Ordinance of 2001.

vi) Delegated legislation can only be struck down if it is directly repugnant to general purpose of the statute which authorized it.

vii) A question of law means a question as to what the law is on a particular point, which provision of law is applicable to a particular factual situation and what the true rule of law is on a certain matter.

viii) High Court can either strike down a provision of law or declare it ultra vires of the Constitution in reference jurisdiction u/s 133 of Ordinance of 2001.

---

18. **Lahore High Court**
Muhammad Maqsood Aslam v. Province of Punjab, etc.
Writ Petition No.66920 of 2020
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2022LHC4788.pdf

Facts: Through instant petition, petitioner has sought direction for respondents to issue retirement notification of petitioner and award pensionary benefits along with payment of outstanding salaries.

Issue: i) Whether right of lien of a civil servant / deputationist, can be terminated when he has not been absorbed permanently in the borrowing department?
ii) What is status of pension?
iii) Whether right of pension can be abridged, reduced or refused arbitrarily?

Analysis: i) Needless to observe here that civil servant / deputationist, who had never been absorbed permanently in the borrowing department would continue to be on deputation and his lien could not be terminated in his parent department. Even his lien cannot be terminated with his consent, unless he has been confirmed against some other permanent post.
ii) Pension is a measure of socio-economic justice which inheres economic security in the fall of life. A person who enters the Government / public service has also something to look forward to after his / her retirement viz. his retirement benefits, the grant of pension being the most valuable of such benefits. Pension is like a salary and is no longer a bounty or an ex-gratia payment, but is a right acquired after putting in satisfactory service for the prescribed minimum period…Pension, like salary, is a regular source of livelihood, and thus, is protected by the right to life enshrined in and guaranteed by Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973.
iii) Right to pension has been conferred by law and cannot be arbitrarily abridged or reduced or refused except to the extent and in the manner provided in the relevant rules and it becomes the property of the retiring employee or civil / public servant as a matter of right upon the termination of his / her service.

Conclusion: i) Right of lien of a civil servant / deputationist, cannot be terminated when he has not been absorbed permanently in the borrowing department.
ii) Pension, like salary, is a regular source of livelihood, and it is protected by the right to life enshrined in and guaranteed by Article 9 of the Constitution.
iii) Right of pension cannot be abridged, reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules.

---

19. **Lahore High Court**
Mst. Ayesha Bibi v. Government of Punjab through its Chief Secretary Punjab, Lahore & another
W.P.No.59277 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2022LHC4781.pdf

Facts: Through instant petition, petitioner has called in question order passed by respondent No.2, whereby Plot in Punjab Government Servants Housing Scheme, Sahiwal, allotted to petitioner was cancelled and Director (Finance & Account) was directed to refund the amount / cost of plot to petitioner. Petitioner has also challenged the vires of Rule 19(3)(b) of the Punjab Government Servants Housing Foundation Rules, 2013.

Issues: i) Whether rules made under statute can transgress the limits and parameters of parent statute?
ii) When court can declare delegated legislation as invalid and ultra vires?

Analysis: i) Undeniably, Rules framed under a statute are to remain within the precinct of the statute itself and cannot transgress the limits and parameters of the parent statute. It is equally well-settled that rule-making power is an incidental power that must follow and not run parallel to the parent statute. Such legislation has to be interpreted in a way which conformed to and stayed within the parameters of the parent statute. No doubt, all efforts are to be made to interpret the rules so as to bring them in conformity and without injuring the intent and spirit of the statute, however where it was not possible then the rules inasmuch as they injured the very intent and spirit must yield to the statute.
ii) Courts will require due proof that the rules / regulations have been made and promulgated in accordance with the statutory authority and if those fail to comply with statutory essentials, the Courts may declare the same as invalid and ultra vires. To determine the vires of delegated legislation, Court has to examine whether such delegated legislation was beyond the power granted by the enabling legislation and whether such delegated legislation was consistent with the parent statute.

Conclusion: i) Rules framed under a statute are to remain within the precinct of the statute itself and cannot transgress the limits and parameters of the parent statute.
ii) If delegated legislation is beyond the power granted by the enabling legislation and such delegated legislation was inconsistent with the parent statute, the Courts may declare the same as invalid and ultra vires.

---

20. **Lahore High Court**
Shakeel Shah and another v. The State
Criminal Appeal No. 53076-J of 2019.
The State v. Shakeel Shah
Murder Reference No. 207 of 2019.

Mr. Justice Sardar Muhammad Sarfraz Dogar,Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC5220.pdf

Facts: In a trial for offences under section 302, 324, 394, 337-F(i), 337-F(iii) and 34 P.P.C, the trial court convicted the appellants and sentenced them on different counts including sentence of death to one of the accused. The appellants have assailed the said conviction and sentence while the trial court submitted murder reference under section 374 seeking confirmation or otherwise of the sentence of death awarded to one of the convicts.

Issues: (i) What is the object and purpose of identification with regard to a criminal offence?
(ii**)** What is the evidentiary value of test identification parade?
(iii**)** Whether implicit reliance can be placed on the statement of an injured witness?
(iv**)** Whether quantum of sentence can be reduced while considering mitigating circumstances in favour of an accused?

Analysis: (i) Facts which establish theidentity of any person whose identity is relevant are, by virtue of Article 22 of the Qanun-e-Shahadat , 1984 , always relevant. 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. Identification proceedings are therefore as much in the interest of the prosecution as in the interest of the accused. An identification parade is held in the course of investigation of an offence for the purpose of enabling the witnesses to identify the persons who are concerned with the offence; they are not held merely for the purpose of identifying persons irrespective of their connection with the offence; the witnesses are explained the purpose of holding these parades and are asked to identify the persons which are concerned in the offence.
(ii**)** Of course, the substantive evidence, i.e., evidence on which alone the Court can base its order of conviction or acquittal, is that given by the witness before the Court, but the value of his deposition there of having identified the accused in the act of the crime is of little consequence. Before the Court can accept such 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. In short, a test identification

is designed to furnish evidence to corroborate the evidence which the witness concerned tenders before the Court.

(iii**)** Implicit reliance can be placed upon the statement of an injured witness whose statement is duly supported by the medical evidence available on record.

(iv**)** It is a well-recognized principle by now that the question of quantum of sentence requires utmost attention and thoughtfulness on the parts of the Courts while the prosecution is bound by law to exclude all possible extenuating circumstances in order to bring the charge home to the accused for the award of normal penalty of death.

Conclusion: (i) The object of identification in criminal offence is to satisfy the investigation authorities as well as the court that the accused is the real offender and its purpose is to enable the witnesses to identify the persons who are concerned with the offence.

(ii**)** Test identification is a corroborative piece of evidence.

(iii**)** Implicit reliance can be placed on the statement of an injured witness.

(iv**)** Quantum of sentence can be reduced while considering mitigating circumstances in favour of an accused.

---

21. **Lahore High Court**
Javaid v. The State and another
Criminal Appeal No. 240557 of 2018.
The State v. Javaid
Murder Reference No. 323 of 2018.
Mr. Justice Sardar Muhammad Sarfraz Dogar, Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC5253.pdf

Facts: In a trial for offences under sections 302, 452, 148 and 149 PPC, the trial court convicted the appellant and sentenced him to death under section 302(b) PPC while acquitting all other co-accused. The appellant has assailed the said conviction and sentence while the trial court submitted Murder Reference under section 374 Cr.PC seeking conformation or otherwise of the sentence of death.

Issues: (i) Whether the non-mentioning of time of occurrence by the prosecution witnesses casts doubt on the prosecution case?

(ii**)** Whether the failure of the prosecution witnesses to prove the presence of light source at the place of occurrence at the time of occurrence entails the failure of the prosecution case when the occurrence took place at night?

(iii**)** Whether the ocular account of a witness can be considered if it contradicts with medical evidence?

(iv**)** Can a conclusion be drawn that an FIR had been registered after pondering and inquiry at the spot if the FIR of a case is not lodged at police station?

(v**)** Whether an unjustified delay in reporting the occurrence to police casts doubts on the veracity of the prosecution witnesses?

(vi**)** Whether the delay in the post mortem examination is reflective of the absence of witnesses?

(vii**)** 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?

(viii**)** Whether the improvements made by the prosecution witnesses impeach their credibility?

(ix**)** Whether recovery of weapon can be relied upon by the prosecution which was effected in clear violation of section 103 Cr.PC?

(x**)** What is the evidentiary value of recovery in case the ocular account is found to be unreliable?

Analysis: (i) The complainant has neither mentioned the time of occurrence in the application for registration of FIR nor did he mention the same in his supplementary statement. Other witnesses of occurrence have also not mentioned the time of occurrence. Had the prosecution witnesses witnessed the occurrence then they definitely would have given the time when the same had taken place, but their failure in this regard proves that they had not seen the occurrence.

(ii**)** None of the prosecution witnesses in their statements recorded by the Investigating Officer of the case or in their statements recorded by the learned trial court, stated that there existed any light source which was lit at the place of occurrence, at the time of occurrence, which occurrence was admittedly taking place at dead of the night, which could have enabled the prosecution witnesses to have witnessed the occurrence and observe the details thereof. The Investigating Officer of the case, also did not take into possession any such source of light which was available and lit at the place of while no source of light was mentioned in the site plans so as to prove that sufficient light was present at the place of occurrence at the time of occurrence for the witnesses to make a positive identity of the assailants. The prosecution failed to establish the fact ofsuch availability of any light source and in the absence of their ability to do so, we cannot presume the existence of such a light source on our own. The absence of any light source has put the whole prosecution case in murk. The failure of the prosecution witnesses to prove the presence of any light sourceat the place of occurrence, at the time of occurrence has repercussions, entailing the failure of the prosecution case.

(iii**)** The ocular account of the occurrence as furnished by the prosecution witnesses is inconsistent with the medical evidence and flawed beyond mending, resulting in disfiguring the whole complexion of the prosecution case beyond reparation and recognition… The contradictions in the ocular account of the occurrence, as narrated by the prosecution witnesses and the medical evidence clearly establish that the prosecutionmiserably failed to prove the charge against the appellant. The contradictions in the ocular account of the occurrence, as narrated by the prosecutionwitnesses and the medical evidence sounded the death knell for the prosecution case and proved to be the cause of its sad demise.

(iv**)** The delay in reporting the matter to the police was of about than 3 to 4 hours, for which delay no reason, much less plausible, was offered. Doubt over the witnessing of the occurrence by the prosecution witnesses is raised due to the fact that the prosecution witnesses never reported the matter to the police on their own…. The august Supreme Court of Pakistan has already enunciated the principle of law that when the F.I.R of the case is not lodged at the Police Station, a conclusion can be drawn that the F.I.R. had been registered after pondering and inquiry at the spot.

(v**)** No justification, much less credible, has been given by the prosecution at any stage for such deferral in submitting the written application for registration of FIR. The reason for this inordinate delay in reporting the matter to the police is obvious, being that the prosecution witnesses had not witnessed the occurrence and the delay was used to formulate a false narrative. In this case, the ocular account furnished is suffering from legal and factual infirmities and does not appeal to a prudent mind, much less a legal one, because, the witnesses never reported the matter to the police for as many as three to four hours. This inordinate delay in reporting the matter conclusively proves that the said application was prepared after probe, consultation, planning, investigation and discussion and as the prosecution witnesses had not witnessed the occurrence, the delay ensued. The scrutiny of the statements of the prosecution witnesses reveals that the said 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 failure of having witnessed the occurrence.

(vi**)** No explanation was offered to justify the delay in conducting the post mortem examination. This 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 the delay in the post mortem examination was used to formulate a false account of the occurrence after consultation and concert. It has been repeatedly held by the august Supreme Court of Pakistan that such delay in the post mortem examinationis reflective of the advancement of a false narrative to involve any person.

(vii**)** 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 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*.

(viii**)** The cross-examination of the prosecution witnesses clearly reflects that the prosecution witnesses introduced blatant improvements in their statements. By improving their previous statements, the prosecution witnesses impeached their own credit as per Article 151 of the Qanun-e-Shahadat Order 1984…As the prosecution witnesses introduced dishonest, blatant and substantial improvements to their previous statements and were duly confronted with their former statements, hence their credit stands impeached and the prosecution witnesses cannot be relied upon on, being proved to have deposed with a slight, intended to mislead the court.

(ix**)** The recovery of the pistol from the appellant cannot be relied upon as the Investigating Officer of the case did not join any witness of the locality during the recovery of the pistol from the appellant 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…. The evidence of the recovery of the pistol from the appellant 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.

(x**)** 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.

Conclusion: (i) The non-mentioning of time of occurrence by the prosecution witnesses casts doubt on the prosecution case.

(ii**)** The failure of the prosecution witnesses to prove the presence of light source at the place of occurrence at the time of occurrence entails the failure of the prosecution case when the occurrence took place at night.

(iii**)** The ocular account of a witness cannot be considered if it contradicts with medical evidence.

(iv**)** A conclusion can be drawn that an FIR had been registered after pondering and inquiry at the spot if the FIR of a case is not lodged at police station.

(v**)** An unjustified delay in reporting the occurrence to police casts doubts on the veracity of the prosecution witnesses.

(vi**)** The delay in the post mortem examination is reflective of the absence of witnesses.

(vii**)** The evidence of the prosecution witnesses which has been disbelieved qua the acquitted co-accused of a convict cannot be believed against the convict.

(viii**)** The improvements made by the prosecution witnesses impeach their credibility.

(ix**)** Recovery of weapon can be relied upon by the prosecution which was effected in clear violation of section 103 Cr.PC.

(x**)** Recovery has no evidentiary value in case the ocular account is found to be unreliable.

---

22. **Lahore High Court**
Talib Hussain and another v. The State and another.
Crl. Appeal No.181 of 2022
Mr. Justice Sardar Muhammad Sarfraz Dogar, Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC4876.pdf

Facts: Through this criminal appeal filed under section 426 of CrPC by petitioners/convicts, sought suspension of execution of sentence awarded to them by court, whereby they were convicted and sentenced under section 337F(vi) & 337A(i) of PPC.

Issues: i) Whether 'arsh and 'daman' are distinguishable and distinct punishments?
ii) Whether courts in all hurt cases may pass sentence for imprisonment as ta'zir while awarding principal sentence of arsh?
iii) Whether provisions of section 337N(2) are applicable when principal punishment provided for offence of hurt is Daman?
iv) Whether initial presumption of innocence stands vanished if accused is held guilty on basis of evidence led at trial?
v) Whether a convict of short sentence ought to be released on bail during pendency of an appeal?

Analysis: i) Separate and distinct punishment of 'daman' has been provided under section 53 of PPC and that has been defined as compensation determined by court to be paid by the offender to the victim for causing a hurt not liable to 'arsh'. The definition contained in section 299(b) of PPC clearly draws a distinction between two punishments viz., 'arsh' and 'daman'.
ii) Non-obstante of clause as contained in subsection 2 to section 337-N of PPC contemplates that courts in all hurt cases may pass sentence for imprisonment as ta'zir while awarding principal sentence of arsh provided that offender was found to be previous convict, habitual, hardened, desperate or dangerous criminal or had committed offence in the name or on the pretext of honour. However, in cases of hurt where punishment of arsh has not been provided, it would be discretion of court to have awarded punishment of imprisonment as prescribed by the section of law falling in Chapter XVI of PPC.
iii) The non-obstante clause of subsection 2 to 7 section 337-N of PPC would not be applicable qua kinds of hurt where no punishment of arsh has been provided and the offenders who are tried for an offence not entailing the sentence of arsh can be dealt with in accordance with the relevant provisions of substantive law. Had it been the intention of legislature to have included the cases relating to hurt entailing punishment of daman in non-obstante clause as contained in subsection 2 to section 337-N of PPC, it could have conveniently been added after the word 'arsh' as hinted in subsection 2 to section 337-N of PPC. Admittedly, it has not

been done so and merely word 'arsh' has been mentioned in the said section of law by excluding the offences under which punishment of daman has been provided from the rigours of section 337-N(2) of PPC

iv) It is by now a settled principle of law that when an accused is held guilty by a court of competent jurisdiction on the basis of evidence so led at trial, initial presumption of innocence simply stands vanished.

v) When a convict not released on bail during the pendency of his appeal, there is every possibility that, before the decision of his appeal, he would have undergone his entire sentence. Furthermore, it would certainly be impossible to compensate the convict for his detention in jail if ultimately he be acquitted after having served out his entire sentence.

Conclusion: i) Yes, 'arsh and 'daman' are distinguishable and distinct punishments.

ii) Yes, courts in all hurt cases may pass sentence for imprisonment as ta'zir while awarding principal sentence of arsh.

iii) When principal punishment for offence of hurt is provided as 'daman' then provisions of section 337-N (2) of PPC would not be applicable.

iv) Yes, initial presumption of innocence stands vanished if accused is held guilty on basis of evidence led at trial.

v) Yes, a convict of short sentence ought to be released on bail during pendency of an appeal.

---

23. **Lahore High Court**
Muhammad Afzal v. The State etc.
W.P. No.8830 of 2019
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2019LHC5021.pdf

Facts: Through this writ petition, the Petitioner assails the vires of investigation conducted by Respondent No.2/ DSP/SDPO Circle being the verifying officer.

Issue: Whether verifying officer can investigate the matter or substitute his findings for previous Investigating officer?

Analysis: From the above discussion it follows that "verify" and "verification" are not synonyms with "investigation" or for that matter, "reinvestigation" which essentially implies collection of evidence to find out how the occurrence took place and who was involved in it… The Court ruled that the verifying officer has to confine himself to the record of the investigation already conducted and cannot substantiate his own conclusions for those of the Investigating Officer.

Conclusion: The verifying officer cannot investigate the matter or substitute his findings for previous Investigating officer.

---

24. **Lahore High Court**
Shahzad v. Ex-officio Justice of Peace etc.
Writ Petition No. 80439/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC4905.pdf

Facts: The Petitioner and Respondents No.3 & 4 are Christian by faith. The petitioner married Respondent No.3 but Respondent No.3 had contracted second marriage with Respondent No.4 without getting divorce from the petitioner. The Petitioner moved an application under section 22-A Cr.P.C. and prayed that a direction be issued to the Respondent SHO for registration of FIR against them. The Ex-officio Justice of Peace dismissed the said application on the ground that it was not maintainable as his earlier application on the same facts had been dismissed by the Ex-officio Justice of Peace. Hence, this petition has been filed.

Issues: i) Whether the principle of res judicata applies to the proceedings under section 22-A (6) Cr.P.C.?
ii) How the principle of res judicata can be defined?
iii) Whether the doctrine of res judicata is applicable to administrative determinations?

Analysis: i) In view of the fact that the Ex-officio Justice of Peace exercises quasi-judicial functions under section 22-A(6) Cr.P.C., in my opinion, the principle of res judicata applies to the applications made to him seeking direction to the officer in-charge of a police station to register FIR under section 154 Cr.P.C. Nevertheless, it does not bar institution of a private complaint as it is an independent statutory remedy.
ii) The principle of res judicata is based on two legal maxims – "interest reipublicae ut sit finis litium", and "nemo debet bis vexari pro eadem causa". Corpus Juris Secundum, Volume 50 (Edition 2009) states: "The term 'res judicata' is sometimes used in a broad or generic sense to encompass or describe a group of related concepts concerning the conclusive effect of a final judgment. Used thusly, the term has been stated to encompass merger, bar and collateral estoppel, or claim and issue preclusion. So as to exclude issue preclusion, or collateral estoppel, res judicata is sometimes used in a narrow sense. In this context, res judicata is sometimes defined as, considered to be synonymous with, claim preclusion, and many courts treat the two concepts as interchangeable, as by using the phrase 'res judicata' or 'claim preclusion'."… The principle of res judicata postulates that when the parties have litigated a claim before a court of competent jurisdiction and it has finally decided the controversy, the interests of the State and of the parties require that the validity of the claim and the matters directly and substantially in issue in the action shall not be litigated again by them or their representatives.
iii) The question as to whether the doctrine of res judicata is applicable to administrative determinations is quite contentious. Some authorities hold that it is

completely inapplicable because the administrative procedures are often summary in nature, the parties are sometimes unrepresented and the dealing officers lack the training that the judges have for adjudication of disputes. The other set of legal experts opine that it depends on the legislative policy. However, the more recent view is that the applicability of the doctrine depends on the nature of the administrative tribunal involved, generally being applied where the function of the administrative agency is judicial or quasi-judicial.

Conclusion: i) The principle of res judicata applies to the proceedings under section 22-A (6) Cr.P.C.
ii) The principle of res judicata postulates that when the parties have litigated a claim before a court of competent jurisdiction and it has finally decided the controversy, the validity of the claim and the matters directly and substantially in issue in the action shall not be litigated again by them or their representatives.
iii) The applicability of the doctrine of res judicata depends on the nature of the administrative tribunal involved, generally being applied where the function of the administrative agency is judicial or quasi-judicial.

---

25. **Lahore High Court**
Maqsood Ahmad v. Province of Punjab, etc
W.P.No.41232 of 2022
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC4757.pdf

Facts: Through this constitutional petition, the petitioner has called in question orders, passed by learned Civil Judge and learned Addl. District Judge, whereby in petitioner's Suit for Declaration and Cancellation of Documents, application filed by him for grant of temporary injunction/stay order has concurrently been dismissed.

Issues: i) Whether an appellant should be provided with an opportunity to comply with the requirement of proviso of order XLIII Rule 1 C.P.C for supplying copies of documents required to be attached with the appeal?
ii) How court can make order of penal nature while deciding the matter on technical grounds for non-compliance of order of the court?

Analysis: i) The consequence for not providing of copies of the documents along with the appeal is not provided in the proviso to Order XLIII Rule 1 of the C.P.C similarly as was not provided in Section 115 of the C.P.C in case of "Revision". As this is a case of first impression relating to filing of copies with appeal in terms of newly added proviso, judgment of superior courts relating to provision of certified copies in case of „Revision" would be very relevant for the purpose of deciding the dispute in hand. In view of the principles laid down in the judgments of apex courts relating to revisions, which mutatis mutandis are applicable to the cases of appeal against orders the petitioner should be provided with an opportunity to

comply with the requirement of proviso of order XLIII Rule 1 C.P.C by supplying copies of documents required to be attached with the appeal.
ii) When the order of penal nature is to be made, then by providing an opportunity it is to be determined that whether the mistake was bona fide or his conduct was contumacious, which could only be done after providing opportunity to the petitioner to supply the relevant record and even if thereafter the petitioner had failed to comply with the order in terms of order of court requiring him to comply with the provision of proviso of Order XLIII Rule 1 of the C.P.C, the court could after being satisfied of his conduct being contumacious may have invoked the penal provisions of deciding the matter on technical grounds for non-compliance of order of the court.

Conclusion: i) Yes, an appellant should be provided with an opportunity to comply with the requirement of proviso of order XLIII Rule 1 C.P.C for supplying copies of documents required to be attached with the appeal.
ii) The court should provide an opportunity for compliance of order of the court before making an order of penal nature while deciding the matter on technical grounds for non-compliance of order of the court.

---

26. Lahore High Court
Muhammad Adil v. Muhammad Saleem
C.R. No. 995 of 2016
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC4815.pdf

Facts: Through this Civil Revision, petitioner has called in question orders of trial court whereby two separate applications first under Order IX Rule 13 C.P.C. and the second under Order XXXVII Rule 4 C.P.C. filed by the petitioner for setting aside the ex-parte judgment & decree against the petitioner in recovery suit filed under Order 37 CPC by the respondent, have been dismissed.

Issues: i) What is the period of limitation for filing of an application for leave to defend?
ii) What is the period of limitation for filing of an application for leave to defend when the defendant is not served with summons personally in a summary suit before the exparte judgment & decree is passed?
iii) Whether under the law the filing of second application on the same subject is permissible after the dismissal of the first on technical grounds?
iv) How the question of limitation is required to be determined?

Analysis: i) The application for leave to defend is to be filed within ten days of service of summons as provided in Article 159 of the Schedule of Limitation Act.
ii) When the defendant was not served with summons personally before the exparte judgment & decree was passed in a summary suit under Order XXXVII C.P.C., then the limitation for filing application for leave to defend is to start from the date when ex-parte judgment & decree was set aside.
iii) Where first application is dismissed on technical grounds or defects without

determining the merits of the case and rights of the parties, filing of second application on the same subject is permissible and same may not be hit by principle of res judicata.
iv) Limitation is a mixed question of law and fact and law requires the same to be determined on case to case basis.

Conclusion: i) Application for leave to defend is to be filed within ten days of service of summons as provided in Article 159 of the Schedule of Limitation Act,1908.
ii) When the defendant is not served with summons personally before the exparte judgment & decree is passed in a summary suit under Order XXXVII C.P.C., then the limitation for filing application for leave to defend is to start from the date when ex-parte judgment & decree was set aside.
iii) Where first application is dismissed on technical grounds, filing of second application on the same subject is permissible and same may not be hit by principle of res judicata.
iv) Limitation is a mixed question of law and fact and law requires the same to be determined on case to case basis.

---

27. **Lahore High Court**
Ehtisham Basharat v. D.I.G., etc.
W.P. No. 63174 of 2021
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC4863.pdf

Facts: Through this constitutional petition, the petitioner has called in question order passed by District Police Officer, (Respondent No. 3) whereby request of petitioner for his recruitment as Constable in the Police Department against vacant post on the basis of being at Serial No. 1 of the waiting list has been declined.

Issue: i) What is purpose of preparing the waiting list at the time of affixing the list of selected candidates?
ii) When candidates on waiting list are to be considered for appointment?
iii) Whether delay in declaration of post as vacant due to non-joining by a successful candidate can be attributed to the candidates in waiting list?

Analysis: i) The purpose of preparing the waiting list at the time of affixing the list of selected candidates is to have a contingency reserve i.e. a pool of successful candidates who can immediately fill vacancies as they arise instead of initiating recruitment process afresh for a limited number of posts that may become available due to non-joining or vacancy of post after joining by selected candidates.
ii) The candidates on waiting list are to be considered for appointment (i) if selected candidates do not join at all or (ii) after joining leave the post before expiry period of waiting list. However, the authorities are required to complete the initial appointment process by appointing selected candidates within the stipulated

time period i.e. the time period for which the waiting list is kept valid and not to delay the same unnecessarily beyond the said period.

iii) Delay in declaration of post as vacant due to non-joining by a successful candidate cannot be attributed to the candidates in waiting list as the said post was to be declared as vacant ab-initio (i.e. from the beginning) and in that case the expiry of period of validity of waiting list cannot be used as an excuse to not consider the case for appointment of candidates on waiting list.

Conclusion: i) The purpose of preparing the waiting list at the time of affixing the list of selected candidates is to have a contingency reserve.

ii) The candidates on waiting list are to be considered for appointment (i) if selected candidates do not join at all or (ii) after joining leave the post before expiry period of waiting list.

iii) Delay in declaration of post as vacant due to non-joining by a successful candidate cannot be attributed to the candidates in waiting list.

---

28. **Lahore High Court**
Muhammad Alamgir v. The State and another
Criminal Appeal No. 316 of 2015
Mr. Justice Anwaarul Haq Pannun, Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC5380.pdf

Facts: The appellant pleaded not guilty at the stage of framing of charge but confessed his guilt afterwards and he was convicted and sentenced by the Drug Court on the basis of confession. The appellant assailed his conviction and sentence awarded to him by the Drug Court through this criminal appeal.

Issues: i) Whether an accused can be convicted on the basis of confession without recording of prosecution evidence afterwards when he pleads not guilty at time of framing of charge?

ii) What are provisions for mode and manner to record the statement of an accused by any Magistrate or Court?

iii) When statement of an accused can be recorded under section 342 of Cr.P.C?

Analysis: i) It is a settled proposition of law that where an accused pleads not guilty at the time of framing of charge and claims trial, there is no discretion left with the trial court to record the confession of the accused afterwards and convict him on the basis of such confession without recording of the prosecution evidence.

ii) It would not be out of place to discuss the applicability of Section 364 Cr.P.C. It provides the mode and manner to record the statement of an accused by any Magistrate or Court except High Court… It equally applies to the statement of the accused recorded during the investigation under section 164 Cr.P.C. by a Magistrate or during the course of trial by the concerned Court under Sections 242, 265-E or 342 Cr.P.C. Every court, except the High Court, where the statement of an accused is recorded during investigation or trial, is bound to follow the procedure laid down in Section 364 Cr.P.C. Rule 11 of the High Court

Rules and Orders, Vol. III, Chapter XIII, also states that section 364 Cr.P.C. provides the mode in which the examination of an accused person is recorded, but nothing in section 364, Cr.P.C. shall be deemed to apply to the examination of an accused person under Section 263, Cr.P.C.

iii) Statement of an accused can be recorded by the trial Court at any stage for providing an opportunity to an accused to explain the circumstances brought on record through evidence. Examination of the accused under section 342 of Cr.P.C. is based on the principle of Audi-Alteram Partem i.e. nobody should be condemned unheard… The condition precedent for invoking section 342 Cr.P.C. is that there must be some circumstances appearing in the evidence against an accused during the course of the trial. In case where no evidence has been recorded by the trial court, there would be no occasion for the trial court to record the statement of an accused under section 342 Cr.P.C.

Conclusion: i) An accused cannot be convicted on the basis of confession without recording of prosecution evidence afterwards when he pleads not guilty at time of framing of charge.

ii) Section 364 Cr.P.C. Rule 11 of the High Court Rules and Orders, Vol. III, Chapter XIII, provide mode and manner to record the statement of an accused by any Magistrate or Court except High Court.

iii) Statement of an accused can be recorded by the trial Court at any stage for providing an opportunity to an accused to explain the circumstances brought on record through evidence.

---

29. **Lahore High Court**
The State v. Muhammad Maqbool alias Allah Wasaya etc.
Murder Reference No. 07 of 2020
Muhammad Maqbool alias Allah Wasaya and another v. The State and another
Criminal Appeal No. 122 of 2020
Mr. Justice Anwaarul Haq Pannun, Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC5543.pdf

Facts: The appellants through this criminal appeal have challenged their conviction and sentence awarded to them by the learned Trial Court in case FIR registered under section 302 and 34 PPC whereas 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 appellants.

Issue: i) Whether the evidence of the prosecution witnesses, which has been disbelieved qua some of the co-accused, can be believed against the other co-accused persons?

ii) Whether the recovery of weapon of offence has any evidentiary value if the court has disbelieved the ocular account of the prosecution?

iii) Whether the fact of abscondence of an accused is sufficient to prove his guilt and can alone be made basis for his conviction?

Analysis: i) 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 recently 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.

ii) 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.

iii) The fact of abscondence of an accused can be used as a corroborative piece of evidence, which cannot be read in isolation but it has to be read along with the substantive piece of evidence. As regards abscondence, the august Supreme Court of Pakistan has held in the case Rasool Muhammad v. Asal Muhammad (1995 SCMR 1373) that abscondence is only a suspicious circumstance. In the case of Muhammad Sadiq v. Najeeb Ali (1995 SCMR 1632) the august Supreme Court of Pakistan observed that abscondence itself has no value in the absence of any other evidence. It was also held in the case of Muhammad Khan v. State (1999 SCMR 1220) that abscondence of the accused can never remedy the defects in the prosecution case. In the case of Gul Khan v. State (1999 SCMR 304) it was observed by the august Supreme Court of Pakistan that abscondence per se is not sufficient to prove the guilt but can be taken as a corroborative piece of evidence. In the cases of Muhammad Arshad v. Qasim Ali (1992 SCMR 814), Pir Badshah v. State (1985 SCMR 2070) and Amir Gul v. State (1981 SCMR 182) it was observed that conviction on abscondence alone cannot be sustained.

Conclusion: i) The evidence of the prosecution witnesses, which has been disbelieved qua some of the co-accused, cannot be believed against the other co-accused persons.

ii) The recovery of weapon of offence has no evidentiary value if the court has disbelieved the ocular account of the prosecution.

iii) The fact of abscondence of an accused is not sufficient to prove his guilt and cannot alone be made basis for his conviction.

---

30. Lahore High Court
The State v. Ahmed Yar
Criminal Appeal No. 297 of 2022
Mr. Justice Anwaarul Haq Pannun, Mr. Justice Sadiq Mahmud Khurram

https://sys.lhc.gov.pk/appjudgments/2022LHC5303.pdf

Facts: In a trial for an offence under section 9(c) of the Control of Narcotic Substances Act, 1997, the trial court dismissed an application filed by the prosecution under section 540 of the Code of Criminal Procedure, 1898 seeking the summoning and re-examination of a prosecution witness. The appellant has assailed the said order of the trial court.

Issues: Whether a Court can summarily dismiss an application in terms of section 540 Cr.P.C. by merely holding that either it was belated application or that it may fill up lacunae in prosecution case?

Analysis: There is no denial to the fact that the solitary purpose of any trial is thediscovery of the truth and to arrive at a correct conclusion and to see that no innocent person is punished. Section 540, Cr.P.C. deals with power of the court qua summoning of witnesses….A close reading of afore-mentioned provision indicates that it gives rather wide powers to the Court to examine any witness as a court witness at any stage of the case. The section consists of two parts: one giving discretionary power to the Court and the other imposing an obligation on it…..The Court cannot summarily dismiss an application in terms of section 540 Cr.P.C. by merely holding that either that it was belated application or that it may fill up lacunae in prosecution case, unless the totality of material placed before it is considered to find out whether examination of the said witness is essential for a just decision of the case.

Conclusion: A Court cannot summarily dismiss an application in terms of section 540 Cr.P.C. by merely holding that either it was belated application or that it may fill up lacunae in prosecution case.

---

31. **Lahore High Court**
Naseer Ahmad. v. The State and two others.
Writ Petition No.4822 of 2022
Mr. Justice Anwaarul Haq Pannun, Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC5389.pdf

Facts: The petitioner was convicted by the trial court for offence under sections 302 and 34 PPC and sentenced to death under section 302(b) PPC while withholding benefit under section 382-B Cr.PC. In criminal appeal filed by the petitioner, the High Court converted death sentence into imprisonment for life but did not give any reason for not extending the said benefit to the convict.

Issues: (i) Whether the power to extend the benefit under section 382-B Cr.PC can be exercised even after the decision of appeal?
(ii**)** Whether the provision of benefit under section 382-B Cr.PC to a convict is mandatory?

(iii**)** Whether the benefit under section 382-B is also available to a convict whose sentence is converted from death to life imprisonment?

Analysis: **(i)** Under section 561-A,Cr.P.C., the Court has the inherent power to extend the benefit provided under section 382-B of the Code of Criminal Procedure, 1898, in appropriate cases even after the decision of the appeal. The only determining factor was to consider whether the learned trial court, which withheld the benefit provided under section 382-B of the Code of Criminal Procedure, 1898, had considered the relevant facts for withholding the said benefit.

(ii**)** 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 mean that this provision was mandatory and it was obligatory on the Courts to give this benefit to the accused who was awarded the sentence of imprisonment.

(iii**)** The benefit under section 382-B Cr.P.C was also available to a person who was awarded death sentence by the trial court but subsequently the same was reduced to life imprisonment. 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.

Conclusion: (i) The power to extend the benefit under section 382-B Cr.PC can be exercised even after the decision of appeal.

(ii**)** The provision of benefit under section 382-B Cr.PC to a convict is mandatory.

(iii**)** The benefit under section 382-B is also available to a convict whose sentence is converted from death to life imprisonment.

---

32. **Lahore High Court**
The State v. Muhammad Siddique
Murder Reference No. 04 of 2021
Muhammad Siddique v. The State and another
Criminal Appeal No. 98 of 2021
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC5442.pdf

Facts: The petitioner alongwith others was tried in a private complaint under sections 302, 148, 149 and 109 P.P.C and the petitioner was convicted and sentenced to death etc, whereas, others were acquitted by learned trial court. This Murder Reference was sent by the learned trial court and the petitioner lodged this Criminal Appeal assailing his conviction and sentence.

Issues: i) What kind of facts which court can presume their existence?

ii) What conclusion can be drawn, when the F.I.R of the case is not lodged at the Police Station?
iii) Whether evidence of a witness which is disbelieved against one accused can be believed against other co-accused?
iv) How the term "rigor mortis" can be defined and what is period of its start and fully development?
v) When ocular account is found to be unreliable, what is value of recovery?
vi) When ocular account is found to be unreliable, what is value of motive alone?
vii) Whether benefit of doubt arising out of single circumstance ought to be extended to accused?

Analysis: i) 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.
ii) The august Supreme Court of Pakistan has already enunciated the principle of law that when the F.I.R of the case is not lodged at the Police Station, a conclusion can be drawn that the F.I.R. had been registered after pondering and inquiry at the spot.
iii) 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 the 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.
iv) Before proceeding any further, it would be advantageous to mention here that 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.
v) 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.
vi) It is also 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 has no evidentiary value and loses its significance.

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) The courts may presume the existence of any fact, which it thinks likely to have happened.
ii) When the F.I.R of the case is not lodged at the Police Station, a conclusion can be drawn that the F.I.R. had been registered after pondering and inquiry at the spot.
iii) Evidence of a witness which is disbelieved against one accused cannot be believed against other co-accused.
iv) 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.
v) If the ocular account is found to be unreliable then the recovery has no evidentiary value.
vi) If the ocular account is found to be unreliable, then motive alone has no evidentiary value and loses its significance.
vii) 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.

---

33. **Lahore High Court**
Muhammad Amjad alias Bholli v. The State
Criminal Appeal No.201-J of 2018
Mr. Justice Sadiq Mehmud Khurram, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC4911.pdf

Facts: The appellant filed instant Criminal appeal through jail and challenged the judgment passed by the learned Sessions Judge whereby the appellant was convicted and sentenced for an offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997.

Issues: What kinds of appeal abate on death of accused?

Analysis: Section 431 of Code of Criminal Procedure, 1898 mandates that every appeal under section 411-A subsection (2), or section 417 shall finally abate on the death of the accused, and every other appeal under this Chapter i.e. Chapter XXXI of the Code of Criminal Procedure, 1898 except an appeal from a sentence of fine, shall finally abate on the death of the appellant.

Conclusion: Section 431 of CrPC mandates that every appeal u/s 411-A or section 417 and every other appeal under chapter XXXI of CrPC, except an appeal from a sentence of fine, shall finally abate on the death of the appellant.

---

34. **Lahore High Court**
The State v. Muhammad Imran
Murder Reference No.02 of 2019
Muhammad Imran v. The State
Criminal Appeal No. 59-J of 2019
Mst. Sajida Bibi v. The State
Criminal Appeal No. 61-J of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC4916.pdf

Facts: Appellants were tried by learned Additional Session Judge for offences u/s 302 & 34 PPC and were convicted & sentenced. Feeling aggrieved the appellants filed criminal appeals through jail whereas learned trial court submitted murder reference u/s 374 CrPC seeking confirmation or otherwise of the sentence of death awarded to one of appellants.

Issues: i) Whether court can draw any inference from the fact that the prosecution witnesses did not receive any injury from assailant when they did not claim that they had hidden or were not visible to assailant?
ii) What inference can be drawn from delay in lodging the FIR?
iii) What is effect of delay in post mortem examination?
iv) Whether a person can be convicted for murder of a person on the basis that murder took place at his house?
v) What is evidentiary value of recovery when ocular account is found to be unreliable?
vi) What is foundational principle of criminal justice system enshrined under Article 117 of QSO?
vii) Whether an accused can be burdened to prove his innocence? If yes. Under what circumstance?
viii) Whether benefit of doubt arising out of a single circumstance can be extended to accused?

Analysis: i) When the prosecution witnesses even did not claim that they did not receive any injury because they had hidden or were not visible to the assailant. Such an incredible consideration and showing them such favour is implausible and opposed to the natural behaviour of any accused. It is all the more illogical that being perceptive of the fact that if the witnesses were left alive, they would depose against the accused. Such behaviour, on part of the accused, runs counter to natural human conduct and behavior which proves that such witnesses did not witness the occurrence. 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.
ii) The inordinate delay in reporting the matter conclusively proves that the written application/the formal F.I.R was prepared after a probe, consultation,

planning, investigation and discussion and the prosecution witnesses have not witnessed the occurrence, the delay was used for procuring their arrival and developing of a false story.

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) A person cannot 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 rather prosecution is bound to prove its case against an accused person beyond a reasonable doubt at all stages of a criminal case…

v) 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.

vi) On a conceptual plain, Article 117 of the Qanune-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.

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. 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 under Article 122 of the Qanun-eShahadat, 1984, to produce evidence of facts, which are especially in his exclusive knowledge, and practically impossible for the prosecution to prove, to avoid conviction.

viii) 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) From the fact that the prosecution witnesses did not receive any injury from assailant when they did not claim that they had hidden or were not visible to assailant, court can draw the inference that such witnesses were not present at the time of occurrence.

ii) The inordinate delay in reporting the matter conclusively proves that the delay was used for developing a false narrative.

iii) Delay in the post mortem examination is reflective of effort to advance a false narrative of the occurrence to involve any person.

iv) A person cannot be convicted merely on the basis of a presumption that since the murder of a person had taken place in his house.

v) 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.

vi) The foundational principle of criminal justice system enshrined under Article 117 of QSO is that the burden is placed on the prosecution to prove the guilt of the accused beyond doubt.

vii) 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 under Article 122 of the Qanun-eShahadat, 1984.

viii) A single circumstance which creates doubt regarding the prosecution case is sufficient to give benefit of doubt to the accused not as a matter of concession but as of right.

---

35. **Lahore High Court**
Muhammad Siddique v. Bagh Ali and two others.
Crl. Appeal No.18 of 2015
Crl. Misc. No. 1333-M of 2022.
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC5326.pdf

Facts: This is an application filed under section 5 of the Limitation Act, 1908, filed by the applicant seeking condonation of delay in filing the Criminal Miscellaneous, the application for restoration of Criminal Appeal, dismissed by the Court due to absence of the appellant and the learned counsel for the appellant.

Issues: i) Whether section 5 of the Limitation Act is applicable to an application for readmission of an appeal dismissed for want of prosecution?

ii) Whether Section 561-A Code of Criminal Procedure, 1898 can be invoked to condone the gross negligence of a party in a matter?

Analysis: i) According to Article 168 of the First Schedule to the Limitation Act, 1908, the period allowed for an application for readmission of an appeal dismissed for want of prosecution is thirty days from the date of the dismissal. This period cannot be extended under section 5 of the Limitation Act as the said section is not applicable to an application made for readmission of an appeal dismissed for want of prosecution.

ii) Nor can section 561-A Code of Criminal Procedure, 1898 be properly used to allow the applicant an extension in the period of limitation. This section cannot be used to defeat the provisions of Article 168 of the First Schedule to the Limitation Act, 1908, read with sections 3 and 5 of the said Act. Where due notice of the date fixed for the hearing had been given according to the High Court Rules and the appellant was absent on the date fixed, the orders of dismissal of the appeal cannot be said to be void ab initio and the provisions of section 561-A Code of Criminal Procedure, 1898 cannot, in such circumstances be commandeered into service… It may further be added that the provisions of Section 561-A Code of Criminal Procedure, 1898, cannot be invoked to condone the gross negligence of a party in a matter. However, the Court does not hesitate in entertaining an

application under section 561-A Code of Criminal Procedure, 1898 and exercising its inherent powers in respect of an order for which the fault lies with the Court itself although the period prescribed under the limitation law for challenging such an order may have expired.

Conclusion: i) Section 5 of the Limitation Act is not applicable to an application for readmission of an appeal dismissed for want of prosecution.
ii) Section 561-A Code of Criminal Procedure, 1898 cannot be invoked to condone the gross negligence of a party in a matter except in case fault lies with the Court.

---

36. **Lahore High Court**
The State v. Abdul Khaliq
Murder Reference No. 14 of 2020
Abdul Khaliq v. The State and another
Criminal Appeal No. 283-J of 2020
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC5037.pdf

Facts: The appellant through this criminal appeal has challenged his conviction and sentence awarded to him by the learned Trial Court in case FIR registered under section 302 PPC whereas 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 appellants.

Issue: i) Whether an accused person can be held guilty merely on the basis that the murder is committed at his house?
ii) Whether in criminal justice system, onus to prove shifts upon the accused?

Analysis: i)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 eyewitnesses 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 had taken place in his house, therefore, it must be he and none else who would have committed that murder.
ii) 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. It 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.

Conclusion: i) An accused person cannot be held guilty merely on the basis that the murder is committed at his house.
ii) In criminal justice system 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.

---

37. **Lahore High Court**
Muhamad Kamran Yousaf v. The State and another
Criminal Appeal No. 190 of 2015
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC5015.pdf

Facts: The appellant through this criminal appeal has assailed his conviction and sentence of rigorous imprisonment for three years under section 27 (1)(a) of the Drugs Act, 1976 and fine of Rs. 50,000/- and in default whereof to further undergo simple imprisonment for three months awarded to him by the Drug Court.

Issue: Whether the report of Government Analyst to determine the identity of the substance without mentioning of the test applied and the details of recognized protocol followed is admissible in evidence?

Analysis: It was imperative and mandatory that the result of the test and analysis of the item submitted for analysis must be given with specifications applied. In the report of Drugs Control and Traditional Medicine Division, National Institute of Health, Islamabad, it is simply mentioned that Neomycin Sulphate was identified in the item sent for analysis instead of mentioning the details of the tests applied on the sample and the protocols followed as required by law. Even the names of the tests applied, if any, to determine the identity of the substance sent for analysis has not been mentioned in the report and it must have mentioned that the test applied to identify the presence of Neomycin Sulphate was in accordance with a recognized standard protocol. Any test conducted without a protocol loses its reliability and evidentiary value. In the absence of mentioning of the test applied and the specifications applied, the report of the Government Analyst of the Drugs Testing Laboratory Lahore and the report of Drugs Control and Traditional Medicine Division, National Institute of Health, Islamabad were not in the prescribed form

and were, hence, not admissible in evidence.

Conclusion: The report of Government Analyst to determine the identity of the substance without mentioning of the test applied and the details of recognized protocol followed is not admissible in evidence.

---

38. Lahore High Court
Murder Reference No.05 of 2020
The State v. Noor Hassan alias Nooro
Criminal Appeal No. 88-J of 2020
Noor Hassan alias Nooro v. The State
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC5147.pdf

Facts: Appellant/convict lodged instant Criminal Appeal, through jail, assailing his conviction and sentences. The learned trial court submitted Murder Reference under section 374 Cr.P.C. seeking the 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) What is the concept of last seen theory?

Analysis: i) Thus, 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) Undoubtedly, "last seen theory" is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty. The "last seen theory" holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. The last seen theory comes into play where the time gap between the point of time when the accused and deceased were last seen 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. The provisions of Article 122 of Qanun-e-Shahadat Order 1984 itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation that appears to the court to be probable and satisfactory. If he does so, he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Article 122 of Qanun-e-Shahadat Order 1984. In a case resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in the discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances

proved against him. Article 122 of Qanun-e-Shahadat Order 1984 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts that are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation as an additional link which completes the chain. Be it noted, that only if the prosecution has succeeded in proving the facts by definite evidence that the deceased was last seen alive in the company of the accused, a reasonable inference could be drawn against the accused and only then the onus can be shifted on the accused under Article 122 of Qanun-e-Shahadat Order 1984.

Conclusion: i) In a case of circumstantial evidence, 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) The last seen theory comes into play where the time gap between the point of time when the accused and deceased were last seen 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.

---

39. **Lahore High Court**
The State v. Mushtaq Ahmad
Murder Reference No.03 of 2020
Mushtaq Ahmad v. The State
Criminal Appeal No. 69 of 2020
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC5608.pdf

Facts: Appellant (convict) lodged Criminal Appeal assailing his conviction and sentence 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) Whether the court can draw any inference from the fact that the prosecution witnesses acted as mere spectators without doing anything to rescue the deceased and apprehend the assailant?
ii) What inference can be drawn from delay in lodging the FIR?
iii) What is rigor mortis and when it starts?
iv) What is effect of delay in post mortem examination?
v) Whether the prosecution is bound to prove the alleged motive?
vi) Whether a person can be convicted for murder of a person on the basis that murder took place at his house?
vii) What is foundational principle of criminal justice system enshrined under Article 117 of QSO?
viii) Whether an accused can be burdened to prove his innocence? If yes, under

what circumstances?

ix) Whether benefit of doubt arising out of a single circumstance can be extended to the accused?

Analysis: i) The allowance of prosecution witnesses to the assailant of causing the death of their near and dear relative speaks loudly that if witness had seen the occurrence, they would have definitely intervened and prevented the assailant from murdering their dear one. 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 behaviour, on 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. We thus trust the existence of this fact, by virtue of the Article 129 of the Qanun-e-Shahadat, 1984, that the conduct of the witnesses, as deposed by them, was opposed to the common course of natural events, human conduct and that had not witnessed the occurrence.

ii) The inordinate delay in reporting the matter conclusively proves that the written application/the formal F.I.R was prepared after a probe, consultation, planning, investigation and discussion and the prosecution witnesses have not witnessed the occurrence, the delay was used for developing a false narrative of the written application.

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.

vi) Delay in the post mortem examination is reflective of effort to advance a false narrative of the occurrence to involve any person.

v) When the prosecution alleges the motive, it is bound to provide evidence 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.

vi) A person cannot 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 rather prosecution is bound to prove its case against an accused person beyond a reasonable doubt at all stages of a criminal case…

vii) 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.

viii) 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. 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 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.

ix) 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) From the fact that the prosecution witnesses acted as mere spectators without doing anything to rescue the deceased and apprehend the assailant, court can draw the inference that such witnesses were not present at the time of occurrence.

ii) The inordinate delay in reporting the matter conclusively proves that the delay was used for developing a false narrative.

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.

iv) Delay in the post mortem examination is reflective of effort to advance a false narrative of the occurrence to involve any person.

v) When the motive is alleged by the prosecution, it is bound to provide evidence to determine the truthfulness of the motive alleged.

vi) A person cannot be convicted merely on the basis of a presumption that the murder of a person had taken place in his house.

vii) The foundational principle of criminal justice system enshrined under Article 117 of QSO is that the burden is placed on the prosecution to prove beyond doubt the guilt of the accused.

viii) 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 under Article 122 of the Qanun-e-Shahadat, 1984.

ix) A single circumstance which creates doubt regarding the prosecution case is sufficient to give benefit of doubt to the accused not as a matter of concession but as of right.

---

40. **Lahore High Court**
Muhammad Waseem and another v. The State and another
Writ Petition. No.1976/ Q/ of 2022
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC5030.pdf

Facts: Through the instant petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners seek quashing of the FIR registered in respect of an offence under section 406 PPC.

Issue: Under what circumstance, the power of quashing an FIR under section 561-A of Criminal Procedure Code is to be exercised by the High Court?

Analysis: No doubt, this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and section 561-A of Criminal Procedure Code has the authority to quash an FIR but this jurisdiction is required to be exercised only in exceptional and rare cases. The power of quashing an FIR and criminal proceeding should be exercised sparingly by the courts and the same has to be done with circumspection. The exercise of the said jurisdiction in routine will not only affect the due process of law but also result in devastating the exercise carried out by the Investigating Agency.

Conclusion: The power of quashing an FIR under section 561-A of Criminal Procedure Code is to be exercised by the High Court only in exceptional and rare cases and not in routine.

---

41. **Lahore High Court**
Muhammad Siraj v. The State and another
Criminal Appeal No. 468 of 2016
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC4961.pdf

Facts: Appellant was convicted & sentenced by learned Additional Sessions Judge in respect of offences u/s 302 & 34 PPC whereas the other co-accused were acquitted. Feeling aggrieved the appellant filed instant criminal appeal.

Issues: i) Whether the court can draw any inference from the fact that the prosecution witnesses acted as mere spectators without doing anything to rescue the deceased and apprehend the assailant?
ii) What inference can be drawn from delay in lodging the FIR?
iii) Whether any inference can be drawn from the fact that the prosecution witnesses did not make any attempt to take the deceased to the hospital?
iv) What is effect of non-production of evidence available with parties?
v) What is rigor mortis and when it starts?
vi) What is effect of delay in post mortem examination?
vii) Whether the evidence of the prosecution witnesses which has been disbelieved qua the acquittal of co-accused can be believed against the accused?
viii) Whether evidence of a witness can be relied on if witness is not coming out

with the whole truth?

ix) Whether a person can be convicted for murder of a person on the basis that murder took place at his house?

x) What is foundational principle of criminal justice system enshrined under Article 117 of QSO?

xi)) Whether an accused can be burdened to prove his innocence? If yes, under what circumstances?

xii) Whether benefit of doubt arising out of a single circumstance can be extended to accused?

Analysis: i) If according to prosecution witnesses they were two in number and were standing just next to the place where the tragic deceased was being strangulated by an unarmed accused and had been standing there prior to the start of the strangulating process but none of prosecution witnesses actually interfered in order to save the life of the victim, No person with 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 apprehend the assailant. The allowance of prosecution witnesses to the assailant of causing the death of their near and dear relative speaks loudly that if they had seen the occurrence, they would have definitely intervened and prevented the assailant from murdering their dear one. 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-eShahadat, 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.

ii) The inordinate delay in reporting the matter conclusively proves that the written application/the formal F.I.R was prepared after a probe, consultation, planning, investigation and discussion and the prosecution witnesses have not witnessed the occurrence, the delay was used for developing a false narrative.

iii) If as per prosecution witness, the deceased remained alive for some time after injuries but prosecution witnesses who all closely related to deceased made no effort to take the deceased to the hospital which convincingly establishes that the said witnesses did not know about the death of the deceased and discovered the same only later.

iv) Article 129 of the Qanun-eShahadat, 1984 provides that if any evidence available with the parties is not produced, then it shall be presumed that had that evidence been produced the same would have been gone against the party producing the same.

v) 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.

vi) Delay in the post mortem examination is reflective of effort to advance a false

narrative of the occurrence to involve any person.

vii) 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.

viii) 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. This Court has 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.

ix) A person cannot 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 rather prosecution is bound to prove its case against an accused person beyond a reasonable doubt at all stages of a criminal case…

x) On a conceptual plain, Article 117 of the Qanune-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.

xi) 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. 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 under Article 122 of the Qanun-eShahadat, 1984, to produce evidence of facts, which are especially in his exclusive knowledge, and practically impossible for the prosecution to prove, to avoid conviction.

xii) 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) From the fact that the prosecution witnesses acted as mere spectators without doing anything to rescue the deceased and apprehend the assailant, court can draw the inference that such witnesses were not present at the time of occurrence.

ii) The inordinate delay in reporting the matter conclusively proves that the delay was used for developing a false narrative.

iii) The court may draw the inference that said witnesses did not know about the

death of the deceased and discovered the same only later.

iv) Withholding of important witnesses without any justifiable cause leads the Court to draw an adverse inference against the prosecution within the purview of Article 129 (g) of Qanun-e-Shahadat Order, 1984.

v) 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.

vi) Delay in the post mortem examination is reflective of effort to advance a false narrative of the occurrence to involve any person.

vii) The proposition of law in Criminal Administration of Justice is 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

viii) Evidence of the prosecution witnesses which has been disbelieved qua the acquittal of co-accused cannot be believed against the accused.

ix) A person cannot be convicted merely on the basis of a presumption that since the murder of a person had taken place in his house.

x) The foundational principle of criminal justice system enshrined under Article 117 of QSO is that the burden is placed on the prosecution to prove beyond doubt the guilt of the accused.

xi) 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 under Article 122 of the Qanun-eShahadat, 1984.

xii) A single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused not as a matter of concession but as of right.

---

42. **Lahore High Court**
Muhammad Afzal @ Ajji v. Superintendent Central Jail Bahawalpur and another.
Writ Petition. No.2681 of 2022
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC5173.pdf

Facts: Through this petition filed under Article 199 of the Constitution petitioner has prayed that the Respondent be directed to calculate the period of Petitioner in accordance with law and release the Petitioner from custody, he served out the sentences passed by the learned trial court.

Issues: How the benefit of section 382-B Cr.P.C can be extended to an accused who is released on bail from jail in one case and is again admitted to jail in other case during the pendency of trial in earlier case?

Analysis: A bare reading of the Rule 35 of the Pakistan Prisons Rules, 1978 makes it clear

that the period which is not to be counted as sentence served is the period which an accused spends out of prison and is not again committed to prison (…)Section 382 of Code of Criminal Procedure, 1898 provides that the court shall take into consideration the period, if any, during which such accused was detained in custody for such offence (…) when the learned trial court directed that all the sentences awarded to the petitioner, in any case, shall run concurrently, then the period spent by the petitioner in prison after 18.06.2020, the date when he was admitted to the Central Jail Bahawalpur in case F.I.R. No.381 of 2020, dated 17.06.2020, has to be considered as sentence served of the sentence awarded to the petitioner in case F.I.R. No.93 of 2020, dated 12.02.2020 registered in respect of an offence under section 9(c) of the Control of Narcotic Substances Act, 1997 at Police Station Saddar Bahawalpur, District Bahawalpur. Had the benefit available under section 382-B of Cr. P.C. had not been extended to the petitioner in both the cases and had the learned trial court not directed that all the sentences awarded to the petitioner, in any case, shall run concurrently, then the situation would have been altogether different.

Conclusion: A bare reading of the Rule 35 of the Pakistan Prisons Rules, 1978 makes it clear that the period which is not to be counted as sentence served is the period which an accused spends out of prison and is not again committed to prison.

---

43. **Lahore High Court**
Writ Petition No.2628 of 2022
Uzma Saeed v. The State and eight others.
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC5138.pdf

Facts: Petitioner moved an application under section 176, Cr.P.C. for disinterment of the body of the deceased before the learned Senior Civil Judge (Criminal Division), which was dismissed. The order of the learned Senior Civil Judge (Criminal Division), was assailed through an application under section 439-A, Cr.P.C. which was also dismissed, hence, the instant petition.

Issues: i) Whether court is under obligation to ascertain the personal grudge or ulterior motive while deciding the application of exhumation of dead body?
ii) What is the Islamic point of view regarding the disinterment of grave?

Analysis: i) While taking into consideration this aspect of the Constitution, this Court is conscious of the fact that disinterment can be done in pursuance of a judicial intervention and there is no legal bar in the same. However, the Court is squarely under obligation to ascertain the element of personal grouse or grudge, coupled with mens rea or ill-will before passing such order, which might cause disgrace even to a dead subject while exercising powers under Article 199 of the Constitution of the Islamic Republic of Pakistan.
ii) From the above, it must be clear that Islam has given much respect to the dead

body of a Muslim and without any justifiable cause, the disinterment of the grave and exhumation of the body would be considered an iniquity. The order of exhumation must be based on detailed reasoning and it should be quite logical, fair and in order to further the cause of justice.

Conclusion: i) Court is squarely under obligation to ascertain the element of personal grouse or grudge, coupled with mens rea or ill-will before passing such order, which might cause disgrace even to a dead subject while exercising powers under Article 199 of the Constitution.
ii) Islam has given much respect to the dead body of a Muslim and without any justifiable cause, the disinterment of the grave and exhumation of the body would be considered an iniquity.

---

44. Lahore High Court
Criminal Appeal No. 746-J of 2019
Habib Ullah v. The State.
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC5086.pdf

Facts: The learned trial court, convicted appellant in respect of offences under sections 302 and 34 PPC. Feeling aggrieved, convict lodged the instant Criminal Appeal through jail, assailing his conviction and sentence.

Issues: i) Whether the evidence of the prosecution witnesses which has been disbelieved qua the acquitted co-accused of the appellant/convict can be believed against the appellant?
ii) Whether prosecution is bound to prove its case beyond shadow of doubt?
iii) Whether an accused can be burdened to prove his innocence? If yes, under what circumstances?

Analysis: i) 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. This Court has 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.
ii) 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 had taken place in his house, therefore, it must be he and none else who would have committed that murder.

iii) 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 Qanune-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 Qanune-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 Qanune-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.

Conclusion: i) 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.

ii) The prosecution is bound to prove its case against an accused person beyond a reasonable doubt at all stages of a criminal case.

iii) Prosecution has to prove the guilt of the accused by producing sufficient evidence, 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.

---

45. **Lahore High Court**
Rehmat Ali v. The State
Criminal Appeal No. 553-J of 2019.
Mumtaz Bibi v. The State and another
Criminal Revision No. 194 of 2019.
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC5184.pdf

Facts: In a trial for an offence under section 302 PPC, the trial court convicted the appellant and sentenced him with imprisonment for life under section 302(b) PPC. The appellant has assailed the said conviction and sentence while the complainant has filed revision petition seeking the enhancement of sentence.

Issues: (i) Whether a chance witness is bound to justify his presence at the place of occurrence at the time of occurrence?

(ii**)** Whether an alleged coincidence of the simultaneous arrival of prosecution witnesses at the time and place of occurrence can be believed in the absence of strong proof of the same?

(iii**)** Whether the failure of the prosecution to produce the residents of the place of occurrence and the most natural witnesses before the trial court makes the veracity of the prosecution case doubtful?

(iv**)** Whether an unjustified delay in the post mortem examination is reflective of the absence of witnesses?

(v**)** Whether an accused can be burdened to prove his innocence unless the legislature by express terms commands otherwise?

(vi**)** When a burden shifts to an accused under Article 122 of the Qanun-e-Shahadat, 1984?

(vii**)** Whether recovery of weapon can be relied upon by the prosecution which was effected in clear violation of section 103 Cr.PC?

(viii**)** What is the evidentiary value of motive and recovery when the ocular account is found to be unreliable?

(ix**)** Whether recovery of empties has any evidentiary value where the empties were sent to PFSA without any justified delay?

Analysis: (i) Where the chance witnesses were not the resident of place of occurrence and who suddenly planned to go to the place of occurrence on the day of occurrence, they were under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence and they were also under a duty to prove their presence by producing some physical proof of the same.

(ii**)** The coincidence of the simultaneous arrival of the prosecution witnesses at the place of occurrence at the very instant when the occurrence was taking place, from a far off village, at the exact relevant moment, is a coincidence too rare to be believed in the absence of strong proof of the same, which proof, provenly lacked in the instant case.

(iii**)** It is an admitted fact of the prosecution case that the place of occurrence was occupied by the other family members of the deceased….failure of the investigating Officers of the case, to include in the investigation the inhabitants of the house where the occurrence had taken place and the failure of the prosecution to produce the said inhabitants of the place of occurrence before the learned trial court, reflects poorly uponthe veracity of the prosecution case. Article 129 of the Qanun-e-Shahadat,1984 provides that if any evidence available with the parties is not produced, then it shall be presumed that had that evidence been produced the same would have been gone against the party producing the same.

(iv**)** The post-mortem examination of the dead body of the deceased was conducted after much delay i.e. after as many as ten hours after the death…The reason which is apparent for the delayed conducting of the post mortemexamination of the dead body of the deceased 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 thewitnesses but also to fashion a false narrative of the occurrence. Noexplanation 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 appellant escaping from the place of occurrence 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, after consultation and planning. It has been repeatedly held by the august Supreme Court of Pakistan that such delay inthe 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 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 byit, there 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 burdenof proof, as provided in Article 117 of the Qanun-e-Shahadat, 1984, mandates the prosecution to prove, and that too, beyond any doubt, the guiltof 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 doubtthe guilt of the accused which burden can never be shifted to the accused, unless the legislature by express terms commands otherwise.

(vi**)** 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 evidenceof 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…. In a criminal case, the burden of proof is on the prosecution and article 122of the Qanun-e-Shahadat, 1984 is certainly not intended to relieve it of that duty.

(vii**)** The recovery of the *Repeater gun* from the appellant/accused cannot be relied upon as the Investigating Officer of the case did not join any witness of the locality during the recovery of the *Repeater gun* from the appellant, resident of the

area around the place of recovery to witness the same, which was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898. Therefore, the evidence of the recovery of the *Repeater gun* from the appellant cannot be used as incriminating evidence against the appellant,being evidence that was obtained through illegal means and hence hit by the exclusionary rule of evidence.

(viii**)** There is a haunting silence with regard to the minutiae of 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…..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.

(ix**)** There was no reason for keeping the empties, which were taken into possession at the Police Station and not sending them to the office of Punjab Forensic Science Agency, Lahore till after the appellant had been arrested. In this manner, the said report of Punjab Forensic Science Agency, Lahore has no evidentiary value as the possibility of fabrication is apparent.

Conclusion: (i) A chance witness is bound to justify his presence at the place of occurrence at the time of occurrence.

(ii**)** An alleged coincidence of the simultaneous arrival of prosecution witnesses at the time and place of occurrence cannot be believed in the absence of strong proof of the same.

(iii**)** The failure of the prosecution to produce the residents of the place of occurrence and the most natural witnesses before the trial court makes the veracity of the prosecution case doubtful.

(iv**)** An unjustified delay in the post mortem examination is reflective of the absence of witnesses.

(v**)** An accused cannot be burdened to prove his innocence unless the legislature by express terms commands otherwise.

(vi**)** Burden only shifts to an accused under Article 122 of the Qanun-e-Shahadat, 1984 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.

(vii**)** Recovery of weapon cannot be relied upon by the prosecution which was effected in clear violation of section 103 Cr.PC.

(viii**)** Motive and recovery has no evidentiary value when the ocular account is found to be unreliable.

(ix**)** Recovery of empties has no evidentiary value where the empties were sent to PFSA without any justified delay.

---

46. **Lahore High Court**
Muhammad Ramzan v. The State and another
Crl. Misc. No.1830-B of 2022
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC5311.pdf

Facts: Through this petition under section 498 Cr.P.C, the petitioner seeks his pre-arrest bail in case F.I.R. registered in respect of an offence under section 489F P.P.C.

Issues: i) Whether evidentiary material can be assessed at the stage pre-arrest bail?
ii) How liberty of the citizens can be guarded by the Courts of law?

Analysis: i) In pre-arrest bail only a tentative assessment of the evidentiary material produced before the Court can be made.
ii) The liberty of the citizens has always been jealously guarded by the Courts of law.

Conclusion: i) Only a tentative assessment of the evidentiary material produced before the Court can be made at the stage of pre-arrest bail.
ii) The liberty of the citizens has always been jealously guarded by the Courts of law.

---

47. **Lahore High Court**
Syed Amjad Hussain Jaffri, etc. v. Addl. District Judge, etc
Writ Petition No.8993 of 2012
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2022LHC4740.pdf

Facts: Through this constitutional petition, the petitioners assailed the vires of orders of trial court and revisional court, whereby, their application for framing of additional issues and permission to produce copy of mutation was dismissed concurrently.

Issues: i) What is difference between "Aala Malik and Adna Malik"?
ii) Whether it is duty of court or parties to frame correct and necessary issues?

Analysis: i) The Digest of Customary Law in the Punjab by Rattigan also defines distinction between "Malik Aala" and "Malik Adna". Paragraph 139 of Rattigan states that "a distinction may be drawn between superior (Malik Aala) and inferior (Malik Adna) proprietors, the former simply levying a sort of customary rent from the latter, who actually occupy the soil, either cultivating themselves or through tenants."
ii) Although it is the duty of the parties to point out framing of necessary issues, yet the Court is, equally bound to frame correct issues, which are necessary for determination of real controversy between the parties. Merely because the parties have not pointed out such issue, Court is not absolved from performing its legal

and statutory duty. Action or inaction on the part of the Court cannnot prejudice a party to litigation. Even if a point is not raised in the pleadings, nonetheless, it would come to the notice of the Court during the course of evidence Court could frame issue in this regard, in order to resolve the controversy between the parties.

Conclusion: i) Aala Malik simply levies a sort of customary rent from Adna Malik, who actually occupy the soil, either cultivating themselves or through tenants.
ii) It is legal and statutory duty of court to frame correct and necessary issues even if parties fail to point out framing of necessary issues.

---

48. **Lahore High Court**
National Highway Authority v. Senior Civil Judge, (Referee Court), Lodhran.
Regular First Appeal No.47 of 2012
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2022LHC4733.pdf

Facts: Through this Regular First Appeal the appellant assailed judgment and decree passed by the learned Referee Court whereby reference u/s 18 of Land Acquisition Act, 1894 filed by the appellant/Authority was dismissed as barred by limitation.

Issues: i) Whether a direct reference can be filed before the court?
ii) What is the limitation period to file a reference?

Analysis: i) Reading sub section (1), (2) and (3) of section 18 and section 3(b) of the Act, 1894, conjunctively, it emerges that reference to Court by any "person interested" other than the Government has to be made within the time prescribed by sub-section (1) & (2) of section 18 ibid, if the award is not accepted by any such aggrieved person and if the award is not acknowledged by the Government (Federal or Provincial), Company or Local Authority constituted under the Government, in such eventuality the reference can be made directly and without the agency of the Land Acquisition Collector under sub section (3) of section 18.
ii) Law provides three different periods of limitation. Six week limitation from the date of the award if the applicant was present either personally or through their recognized agent at the time when the award was made. In case the applicant was not present either personally or through his agent, then a six week time from the date of the notice received under section 12, subsection (2) or if no notice was served then six months from the date of award. The period of six months is the utmost time within which an application for reference can be made by a person dissatisfied with the award

Conclusion: i) Yes, a direct reference can be filed before the court if the award is not acknowledged by the Government (Federal or Provincial) department.
ii) Law provides three different periods of limitation. Six week limitation from the date of the award if the applicant was present either personally or through their

recognized agent at the time when the award was made. In case the applicant was not present either personally or through his agent, then a six week time from the date of the notice received under section 12, subsection (2) or if no notice was served then six months from the date of award.

---

49. **Lahore High Court**
Bilal Azam v. Muhammad Haq Nawaz, etc.
Criminal Revision No. 22527 of 2020.
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC4751.pdf

Facts: Through this criminal revision, petitioner has called in question the order passed by the learned Additional Sessions Judge, whereby, while declining post arrest bail to the petitioner on merits he was ordered to be released on bail by extending benefit of section 337-N(2) PPC subject to deposit of amount as 'arsh' along with furnishing of bail bond.

Issues: Whether a court can impose any condition while deciding bail petition even if an offer is not tendered by the accused?

Analysis: If an accused put "nolo contendere" (no contest), he can be released on bail if deposit the amount of arsh/daman and the criminal process shall follow accordingly. But if such an offer is not tendered by the accused, as to whether court while deciding bail petition of the accused can impose any condition like deposit of arsh amount etc. In this respect, **T**hough Chapter XXXIX of Code of Criminal Procedure, 1898 relating to subject of bail, does not contain any provision of imposing condition for bail but Chapter XXIX of Cr.P.C. contains a provision though in the form of remission or suspension of sentence, yet it does include a relevant provision to the subject in hand. Section 401 of Cr.P.C. says that Provincial Government can suspend or remit the sentence without conditions or upon any condition which the person sentenced accepts, and the condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will. Powers conferred upon Provincial Government under this section can also be exercised by a Criminal Court to pass any conditional order. Section 401(4-A) of Cr.P.C. clearly says that a criminal court can pass conditional order to restrict the liberty of any person or to impose any liability upon him or his property; obviously bail is the matter which restricts the liberty of a person; therefore, if the circumstances warrant, a condition can be imposed while granting bail to an accused but such condition should not be illegal or unreasonable, and either be accepted by him or is independent of his will.

Conclusion: Court while deciding bail petition of the accused can impose any condition even if an offer is not tendered by the accused.

---

50. Lahore High Court
Multan Development Authority v. Muhammad Abdullah Shah (deceased) through L.Rs
C. R. No. 1003-D / 2011
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2022LHC4712.pdf

Facts: This Civil Revision is directed against the impugned Judgments & Decrees passed by the Civil Judge and Additional District Judge respectively, whereby, respondents' suit for recovery was decreed.

Issues: i) Whether an aggrieved party has a lawful right to institute a suit for recovery of due adequate compensation where land is possessed and utilized by the Government or its instrumentalities without triggering the mechanism of acquisition under the Land Acquisition Act?
ii) Whether a proved claim of compensation of an aggrieved party against illegal acquisition can be referred to the Collector by initiating a fresh process of acquisition?
iii) Whether High Court in revisional jurisdiction can mould relief to provide complete and substantial justice keeping in view the peculiar facts and circumstance of the case?

Analysis: i) The Land Acquisition Act provides a complete code in terms of acquisition and determination of adequate compensation of property acquired for public purpose. However, there is no provision in the Act to deal with a situation where land is possessed and utilized by the Government or its instrumentalities without triggering the mechanism of acquisition under the Act. In such a scenario, the aggrieved party is well within his lawful right to institute a suit for recovery of due adequate compensation. Needless to state that even where acquisition proceedings are initiated in accordance with the provisions of the Act, the reference under Section 18 of the Act is adjudicated by the principal civil court of original jurisdiction in terms of objections regarding measurement of the land, the amount of the compensation and the persons to whom it is payable against the 'Award' rendered by the Collector. Hence, a civil suit for recovery of compensation was a proper remedy for a person whose property is taken away or usurped by the State or any of its instrumentalities for public purpose without initiating the process of acquisition and payment of due compensation under the Act.
ii) The decision to refer the matter to Collector for determination of due compensation would therefore, be unjust, unfair and in violation of fundamental right of the aggrieved party. It would tantamount to give a license to the Government or its instrumentalities to compulsorily acquire properties without following due process of law. It follows that where the acquiring agency usurps the right of a person by forcibly occupying his property, the aggrieved person may

bring a suit for recovery of compensation in line with the principles of determination of compensation under the Act since there is no mechanism to trigger the provisions of the Act to seek compensation after forcible possession and consumption of property.

iii) The jurisdiction vested in High Court under Section 115 of the Code of Civil Procedure, 1908 (the "CPC") is remedial, corrective, supervisory, discretionary and equitable. The Court is empowered to remedy errors of illegality or irregularity in the lawful exercise of jurisdiction to ensure that complete and substantial justice is done between the parties. There are no fetters imposed on the powers conferred upon High Court in revisional jurisdiction to correct errors of illegality found in the Judgments & Decrees passed by the Courts below and the relief can be adequately moulded to provide complete and substantial justice keeping in view the peculiar facts and circumstance of the case.

Conclusion: i) An aggrieved party has a lawful right to institute a suit for recovery of due adequate compensation where land is possessed and utilized by the Government or its instrumentalities without triggering the mechanism of acquisition under the Land Acquisition Act.

ii) A proved claim of compensation of an aggrieved party against illegal acquisition cannot be referred to the Collector by initiating a fresh process of acquisition.

iii) High Court in revisional jurisdiction can mould relief to provide complete and substantial justice keeping in view the peculiar facts and circumstance of the case.

---

51. **Lahore High Court**
Muhammad Naveed Akhtar v. Mst. Ghazala Batool, etc.
W.P. No.43023 of 2022
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC4837.pdf

Facts: Through this Constitutional Petition, the petitioner has challenged a judgment and decree passed by a learned Judge Family Court and appellate Court whereby his right to defend the suit filed by respondent no.1 has been struck-off U/Section 17-A of family court Act, 1964 and the suit of respondent no.1, only to the extent of recovery of maintenance, has been decreed.

Issues: Whether the court can allow any defendant to continue defending the suit without first making payment of interim maintenance?

Analysis: Section 17-A was inserted through Family Courts (Amendment) Ordinance 2002 (LV of 2002). In its original form, the said Section 17-A empowered the Family Court to strike off the defence of the defendant. Later through Punjab Family Courts (Amendment) Act 2015 (XI of 2015), the discretion bestowed on the Family courts was converted into an obligation and the use of the word "shall" repeatedly reflecting in the current statutory provision leaves no room for the Family Courts to either not fix interim maintenance allowance or to allow any

defendant to continue defending the suit without first making payment of interim maintenance. Section 17-A makes the right of any defendant to defend the suit against him, otherwise guaranteed to him, conditional upon his payment of interim maintenance already fixed by the court.

Conclusion: Court cannot allow any defendant to continue defending the suit without first making payment of interim maintenance.

---

52. **Lahore High Court**
Ghulam Siddique v. Addl. Sessions Judge, etc.
Writ Petition No.18344 of 2019.
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC4722.pdf

Facts: Respondent filed an application under Section 133 Cr.P.C. against the petitioner and learned area magistrate issued direction to SHO to restore and open public passage for use of public. The criminal revision filed by petitioner was also dismissed. The petitioner challenged the concurrent findings recorded by the two courts below by filing the present constitutional petition.

Issues: i) Whether proceedings under Section 133 Cr.P.C. can be carried out even if the public right of way in question is not officially sanctioned yet existent and used by the public in general?
ii) Whether the dedication of the way for the use of public at large is necessary by the owner in joint khata?
iii) What is the purpose of insertion of Section 133 in Cr.P.C?

Analysis: i) For Section 133 Cr.P.C to be attracted, the right of way from which a nuisance is sought to be removed must be one which is or may be usefully used by public. The place has to be open to the public i.e. a place where the public has access by permission, usage or even otherwise. There remains no question of whether such land reflects as a public way in the land record or not since it is not the categorization or ownership of the land but the consistent use of such piece of land by public which necessitates an order under Section 133. Even if a street or a passage is not a declared public street in the revenue record, a public passage could still come into existence on account of its use by the public in general.
ii) There is no question about any dedication of the owner because in a common/joint khata each co-sharer is considered as an owner in possession. And the constant use of such thoroughfare/right of way by the general public clearly attracts Section 133 Cr.P.C. The co-sharers can permit the use of the thoroughfare by conduct…
iii) The purpose of insertion of Section 133 in Cr.P.C is apparent from the heading of the provision; "conditional order for removal of nuisance" i.e the magistrate is required to ascertain the existence of nuisance and not the nature of land or property over which right of way is claimed. The said purpose is reinforced by Section 139-A, which provides that the only defence against an order made under

Section 133 is denial of existence of any public right, hence, emphasizing that only in the absence of a public right of way, can such an order be recalled.

Conclusion: i) Proceedings under Section 133 Cr.P.C. can be carried out even if the public right of way in question is not officially sanctioned yet existent and used by the public in general.

ii) There is no question about any dedication of the owner because in a common/joint khata each co-sharer is considered as an owner in possession. The co-sharers can permit the use of the thoroughfare by conduct…

iii) The purpose is to ascertain the existence of nuisance and not the nature of land or property over which right of way is claimed.

---

53. **Lahore High Court**
Nisar Ahmad Afzal v. D.G. Anti-Corruption, etc.
W.P. No.43868 of 2022
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC5645.pdf

Facts: The Director General, Anti-Corruption Establishment transferred the investigation of the crime report and entrusted the same to a Joint Investigation team on application filed by respondents No.5 and 6 i.e. accused persons. The petitioner being the complainant challenged the change of investigation through the present constitutional petition.

Issues: i) Whether there is any provision in the Anti-Corruption legal regime entitling the Director General to constitute a Joint Investigation Team for the purpose of investigating a crime report registered under the Anti-Corruption Establishment legal regime?

ii) Whether before ordering change in investigation in a crime report it is necessary to hear the complainant or an accused?

iii) How the term "speaking order" can be defined?

Analysis: i) Unlike the Police Order, 2002, neither the Punjab Anti-Corruption Establishment Ordinance, 1961 ("the Ord., 1961") nor the Punjab Anti-Corruption Establishment Rules, 2014 ("the Rules, 2014") contain any provision specifically prescribing any mode or procedure for transfer or change of investigation to an officer other than the one conducting investigation. Rule-15(2) of Rules 2014, however, empowers the Director General Anti-Corruption Establishment to peruse the record of any pending investigation and issue any direction to ensure fair and speedy investigation. Any such order passed by the Director General can be assailed before the Chief Secretary [Rule-15(3)] or the Chief Minister [Rules-15(4)]… Although no specific mechanism is provided under Anti-Corruption Establishment Ordinance, 1961 or Rules, 2014, it seems that if the facts of the case require assistance of a team in addition to the investigation officer, the Director General can, by using the powers under Rule-15(2), order the investigation to be conducted by a team of experts, equipped with the relevant

expertise to evaluate the facts and allegations in a matter.

ii) An accused has no right of hearing at the stage of investigation as regards the aspects related to or arising from the process of investigation, including the issue as to the agency which would conduct the investigation or the manner of conducting the investigation. The accused does not come in the picture and he has no right to claim that he is a necessary party at the stage of investigation and that he should be impleaded as a necessary party and should be joined as respondent and/or to claim a right of being heard… The facts of the case and the discussion would show that whether investigation should be transferred or not and whether investigation should be carried out by a particular agency or not are issues between the Court and an investigating agency and the complainant or an accused is not and/or cannot be considered a necessary party in such proceedings.

iii) It is trite that an order has to contain reasons so as to allow the reader to understand and comprehend the grounds prevailing with an authority in arriving at a conclusion. The reasons given for a decision explain the justification or logic for such a decision. Such reasons give satisfaction to the person against whom a decision has been given about the decision not being purely arbitrary or whimsical. Reasons take a matter out of the realm of subjectivity. The requirement of giving reasons, therefore, operates as an important check on abuse of powers. Reasons can be said to be the heartbeat of every conclusion since reasons introduce clarity, regularity and rationality in a decision without which a decision is lifeless. It is equally established that a speaking order means an order that speaks for itself and order can only speak through the reasons rendered in support thereof. It is only when a decision reveals a rational nexus between facts considered and the conclusion drawn that such decision can be held to be just and reasonable. The chain between conclusion and fact in a decision is broken if there are no reasons provided to support the conclusion.

Conclusion: i) There is no provision in the Anti-Corruption legal regime specifically prescribing any mode or procedure for transfer or change of investigation to an officer however, the Director General Anti-Corruption Establishment is empowered to peruse the record of any pending investigation and issue any direction to ensure fair and speedy investigation.

ii) It is not necessary to hear the complainant or accused before ordering change in investigation in a crime report.

iii) A speaking order means an order that speaks for itself and order can only speak through the reasons rendered in support thereof.

---

54. **Lahore High Court**
Dr. Rana Zeeshan v. Government of Punjab, etc.
Writ Petition No. 7096 of 2022
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2022LHC4900.pdf

Facts: The petitioner has challenged the order passed by respondent No.2 whereby the

services of the petitioner as medical officer (BPS-17/Adhoc) were recommended to be terminated on account of professional misconduct, negligence and inefficiency, with immediate effect

Issues: Whether it is mandatory for the department to hold regular inquiry for termination of an ad-hoc employee on the ground of misconduct?

Analysis: It is settled law that when an employee is to be terminated on the ground of misconduct, which in itself is a stigma, it is mandatory for the department to hold regular inquiry enabling the employee (even he is ad-hoc employee) to defend the allegations leveled against him before an unbiased and independent forum…

Conclusion: It is mandatory for the department to hold regular inquiry for termination of an ad-hoc employee on the ground of misconduct.

LATEST LEGISLATION/AMENDMENTS

1. The Punjab Finance Act 2022 (Act IX of 2022) enacted to levy, alter and rationalize certain taxes and duties.
2. The Punjab Solicitor's Department (Ministerial and Miscellaneous Posts) Service Rules 2022 made while repealing The Punjab Solicitor's Department Service Rules, 1985.
3. Amendment in Punjab Small Industries Corporation Act, 1973 (XV of 1973) to relax aggregate limits to give loans, make subscription and furnish guarantees provided under section 21.

SELECTED ARTICLES

1. MANUPATRA

https://articles.manupatra.com/article-details/INDECENT-REPRESENTATION-OF-WOMEN-IN-ADVERTISEMENTS

Indecent Representation Of Women In Advertisement By Shrinithi.S.R

ABSTRACT:

Advertising is a tool used to raise consumer awareness. It raises awareness, but it also shapes the public's perception of the product and services offered by the company. The race to the finish line is difficult in the twenty-first century, where there is fierce competition. One of the most difficult challenges for businesses is not only designing and selling their products, but also creating advertisements to entice people to try and buy their products. Firms use women as tools to create a brand image, whether they are relevant or not. One issue that everyone ignores is the portrayal of women in irrelevant advertisements that degrades their dignity. Despite the fact that there are laws prohibiting the representation of women in irrelevant advertisements that compromise their dignity, marketers continue to do so with pride. This demonstrates the effectiveness

of the laws enacted to protect the dignity of the most important segment of society, women.

This article examines the scenario of unethical representation of women in advertisements in light of current laws and the effects on them.

2. MANUPATRA

https://articles.manupatra.com/article-details/CHILD-PORNOGRAPHY-IN-INDIA-A-STUDY-FROM-SOCIO-LEGAL-PERSPECTIVES

Child Pornography In India: A Study From Socio-Legal Perspectives By PALAK NIGAM

ABSTRACT:

Children are required to be taken care of very adequately throughout their formative years as they are valuable members of society. As they are a vulnerable group so they can easily become a suspect in several cases of abuse, especially sexual assault. To use children for sexual pleasure is completely a violation of human rights. The first government of India passed a law on the sexual abuse and exploitation of children was the Protection of Children from Sexual offenses act, 2012 that provides various penalties. But as we can see that there is a rise in the number of cases, so it is evident that the laws are not properly implemented. Therefore the government is making necessary amendments in the act to make it more efficient. The current article reviews the socio and legal issues connected with child sexual abuse in India. It critically analyzes the existing legal framework, focusing on recently implemented amendments of the POCSO act by looking at how these laws can be useful in deteriorating the sexual abuse crimes in India. It further looks into how child pornography affects the fundamental rights of children and what are the impacts of child pornography on children and society. At last, it also covers some of the aspects of child sexual abuse during the covid-19 pandemic in India.

3. MANUPATRA

https://articles.manupatra.com/article-details/Law-and-Economics-The-role-of-law-and-legal-systems-in-economic-development-with-a-special-emphasis-on-India

Law and Economics: The role of law and legal systems in economic development with a special emphasis on India By Aryan Tulsyan

ABSTRACT:

In this paper, I have studied one of the aspects of the cross-sections between law and economics, where I analyse the role played by laws and legal systems on the economic development of countries. I give a special emphasis on the Indian economy, but I study the impact on USA and China's economies as well. The paper also compares the impact between India and USA, and understands how the Chinese economy functions differently. I have used existing literature, as well as data from institutions like the World Bank to support my arguments. Understanding and improving the laws and legal systems on which an economy is built could be propitious for economic development.

4. **MANUPATRA**

https://articles.manupatra.com/article-details/Models-of-Judicial-Review-in-US-viz-a-viz-India-Analysis-Paving-a-Path-Towards-Filling-Legislative-Lacunas

Models of Judicial Review in US viz a viz India: Analysis Paving a Path Towards Filling Legislative Lacunas By Ritika Kanwar

ABSTRACT:

Strong and weak 'judicial review' is often regarded as synonymous to strong and weak 'basic structure review'. Both strong and weak judicial review along with their distinction hold a privileged pedestal in comparative constitutional law. Even though they are distinct, a more accurate assertion would be evolving from the weak form, the judicial review was transformed and escalated to reinvent the same into a novel and strong form of judicial review. The article delves into roots of these increasingly influential models, i.e., strong and weak judicial review along with their characteristics, application, scope, relevance and recent developments. Apart from evolution and timely evaluations, the article deals with appreciation and criticism and strives to conclude it with a possibility of emergence of a distinct form to fill in the gap between the aforesaid models. The judiciary is entitled to pursue interactions with administrative authorities, having statutory power, for pragmatic implementation of socio-economic and fundamental rights. The article looks into the circumstances wherein such deliberations take the form of dictation beyond the constitutional limits. Therefore, the article mentions some related concepts of judicial overreach and judicial activism along with doctrine of judicial supremacy when found applicable.

5. **MANUPATRA**

https://articles.manupatra.com/article-details/CRITICAL-ASSESSMENT-OF-RERA

Critical Assessment Of RERA By Shrinithi.S.R

ABSTRACT:

Real estate is a globally recognized and regulated industry. Over the last few decades this sector has grown significantly in India making it the world's second-largest player. Up till 2016, only the general consumer laws and property laws governed this sector and there was no specific statute to regulate it. Therefore, the RERA (Real Estate Regulating Act), 2016 bill was passed by Rajya Sabha followed by Lok Sabha in the month of March in 2016 and then act came into force in May 2016. The act was established with the goal to ease the process of buying a property, protect the interest of the buyers, to encourage investment in the real estate sector and to do all of that in a transparent manner. This article has attempted to analyze the Act's inception, importance, objectives, provisions and the impacts and finally, the various details that the legislature fails to address, as well as the various loopholes in this legislation, will be discussed.

6. MANUPATRA

https://articles.manupatra.com/article-details/Prevailing-biases-against-men-quest-for-a-gender-neutral-milieu

Prevailing biases against men- quest for a gender-neutral milieu By Tanisha Maheshwari

ABSTRACT:

Society has very biased and pre-conceived notions about men. The patriarchal society can be highly discriminatory towards men too, always expecting them to "take it like a man" and be the strongest version of themselves. Society is highly critical and exceptionally disparaging of men, especially when it comes to them being the victim. But the society works on reciprocity and mutual concession. One gender cannot be highly regarded or protected at the cost of another. Under the portrayal of masculinity, men endure discrimination, prejudice, and a general lack of belief. This article aims at analysing and comprehending the unspoken issues of that gender of the society that suffers in silence and had to put up with societal notions.