LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-11-2021 to 15-11-2021)

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

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Senior Superintendent of Police (Operations) v. Shahid Nazir
Civil Appeal No.608 Of 2021
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._608_2021.pdf

Facts: A show cause notice was issued to the respondent under the Punjab Police (E&D) Rules, 1975 that he failed to perform his duty efficiently and registration of some FIRs in different Police Stations exposes his involvement in criminal cases in which Reports under Section 173 Cr.P.C were also submitted in the concerned trial courts.

Issue: What is the difference between departmental inquiry and criminal prosecution? Whether both may be conducted simultaneously?

Analysis: The purpose and sagacity of initiating disciplinary proceedings by the employer is to find out and come to a decision whether the charges of misconduct leveled against the delinquent officer/employee are proved or not and in case his guilt is established, what action should be taken against him under the applicable Service laws, Rules and Regulations, which may include the imposition of minor or major penalties in accordance with the fine sense of judgment of the competent Authority/Management. In contrast, the perception and rationality to set into motion criminal prosecution is altogether different where the prosecution has to prove the guilt of an accused beyond any reasonable doubt. Both have distinct features and characteristics with regard to the standard of proof. It is well settled exposition of law that the prosecution in the criminal cases as well as the departmental inquiry on the same allegations can be conducted and continued concurrently at both venues without having any overriding or overlapping effect. The object of criminal trial is to inflict punishment of the offences committed by the accused while departmental enquiry is geared up or activated to inquire into the allegations of misconduct in order to keep up and maintain the discipline and decorum in the institution and efficiency of department to strengthen and preserve public confidence on any such institution. Even an acquittal by criminal court would not debar an employer from exercising disciplinary powers in accordance with applicable service Rules and Regulations.

Conclusion: the difference between departmental inquiry and criminal prosecution has been given above. The prosecution in the criminal cases as well as the departmental inquiry on the same allegations can be conducted and continued concurrently.

2. **Supreme Court of Pakistan**
Muhammad Akram v. The State
Criminal Miscellaneous Applications No. 365-L/2020 and 96-L/2021 in/and Jail Petition No.491 of 2017
Mr. Justice Gulzar Ahmed, HCJ. Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.m.a._365_l_2020.pdf

Facts: Petitioner murdered his wife when she was in police custody in connection with a theft case on account of "ghairat" and also injured a police constable. He was convicted under section 7 of ATA, 302(b), 324, 353 etc PPC. Compromise with the legal heirs of deceased and injured constable was effected.

Issue: i) Whether creation of fear or insecurity in the society due to an act which is a result of private enmity when fear or insecurity is not intended is by itself terrorism?
ii) What is diminished liability?

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

ii) It is a legal doctrine that absolves an accused person of part of the liability for his criminal act if he suffers from such abnormality of mind as to substantially impair his responsibility in committing or being a party to an alleged violation, which is committed due to love and affection and injury to reputation. The doctrine of diminished responsibility provides a mitigating defense in cases in which the mental disease or defect is not of such magnitude as to exclude criminal responsibility altogether.

Conclusion: i) Only creating fear or insecurity in the society is not by itself terrorism unless the motive itself is to create it.
ii) It is a legal doctrine that absolves an accused person of part of the liability for his criminal act if he suffers from such abnormality of mind as to substantially impair his responsibility in committing or being a party to an alleged violation, which is committed due to love and affection and injury to reputation.

3. **Supreme Court of Pakistan**
Zahid v. The State
Criminal Petition No. 75-Q of 2021
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._75_q_2021.pdf

Facts: Accused was convicted for sexually abusing the daughter of the complainant.

Issue: Whether solitary statement of victim of sexual offence is sufficient for the conviction?

Analysis: Rape is a crime that is usually committed in private, and there is hardly any witness to provide direct evidence of having seen the commission of crime by the accused person. The courts, therefore, do not insist upon producing direct evidence to corroborate the testimony of the victim if the same is found to be confidence inspiring in the overall particular facts and circumstances of a case, and considers such a testimony of the victim sufficient for conviction of the accused person…. The statement of the victim in isolation itself is sufficient for conviction if the same reflects that it is independent, unbiased and straight forward to establish the accusation against the accused.

Conclusion: Solitary statement of victim of sexual offence is sufficient for the conviction if the same reflects that it is independent, unbiased and straight forward to establish the accusation against the accused.

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4. **Supreme Court of Pakistan**
Sakhi Jan & another v. Qamar Ali Khan
Civil Petition No.223-P/2012
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._223_p_2012.pdf

Facts: Suit of plaintiff for pre-emption against two vendees was partially decreed.

Issue: Whether the distribution of the property under Section 20 of the Act of 1987 between the parties having equal status and right of pre-emption on the basis of contiguity is to be made in two equal shares or per capita?

Analysis: In such like situations, the property has to be distributed as per capita. Further simplifying the matter, we may add that the number of pre-emptors and the vendees, having the same status and pre-emption right, will get the property under pre-emption in equal shares.

Conclusion: The property has to be distributed as per capita.

5. **Supreme Court of Pakistan**
General Manager, SNGPL v. Qamar Zaman
Civil Petition No.509-P/2012
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._509_p_2012.pdf

Facts: A suit was filed in a civil court with regard to the matter which the Authority was empowered to determine under Oil & Gas Regulatory Authority Ordinance, 2002.

Issue: Whether a Civil Court, being a Court of plenary and ultimate jurisdiction, will have jurisdiction to entertain the disputes referred to in the Ordinance despite the fact that there is no specific bar in the statute over the jurisdiction of the Civil Court?

Analysis: The Oil & Gas Regulatory Authority Ordinance, 2002 being a special law explaining the powers and jurisdiction of the Authority and redressal of the disputes with overriding effect, then no other forum, Tribunal shall have the jurisdiction to step in for resolving the disputes. An overall look of the Ordinance would reflect that except the provisions of Section 43, which gives the overriding effect to the Ordinance, and the provisions of Sections 11 & 12 of the Ordinance, providing the procedure for resolving the disputes and appeal against the order/decision of the Authority, no other specific provision barring the jurisdiction of the Civil Court is there in the Ordinance. In the given circumstances, question would arise, as to whether a Civil Court, being a Court of plenary and ultimate jurisdiction, will have no jurisdiction to entertain the disputes referred to in the Ordinance despite the fact that there is no specific bar in the statute over the jurisdiction of the Civil Court? Answer to the above question would be a simple yes. No doubt, there is no specific bar provided in the statute over the jurisdiction of Civil Court but the above noted provisions of the Ordinance would reflect that an exclusive jurisdiction has been conferred on the Authority for determining the disputes referred to in the Ordinance which reflects the intent of the legislature. In such like situation, the jurisdiction of Authority is exclusive and the jurisdiction of Civil Court is barred but this would be an implied bar, very much permissible under the settled law and it will be equivalent to the specific bar provided in any statute.

Conclusion: Though there is no specific bar provided in the statute over the jurisdiction of Civil Court but the above noted provisions of the Ordinance would reflect that an exclusive jurisdiction has been conferred on the Authority for determining the disputes referred to in the Ordinance which reflects the intent of the legislature. In such like situation, the jurisdiction of Authority is exclusive and the jurisdiction of Civil Court is barred but this would be an implied bar, very much permissible

under the settled law and it will be equivalent to the specific bar provided in any statute.

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6. **Supreme Court of Pakistan**
Shakeel Shah v. The State
Criminal Petition No.1072/2021
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1072_2021.pdf

Facts: The bail of accused for offences punishable under sections 392 and 411 on the ground of statutory delay was dismissed throughout. He requested the august Supreme Court to release him on bail due to non-conclusion of trial.

Issue: i) When the period of one year begins for computing the statutory period of one year for grant of bail?
ii) How to determine that act or omission of accused has caused delay in the conclusion of trial?
iii) How to determine that whether or not the accused is a hardened, desperate or dangerous criminal?

Analysis: i) The period of one year for the conclusion of the trial begins from the date of the arrest/detention of the accused and it is of little importance as to when the charge is framed and the trial commenced.
ii) The act or omission on the part of the accused to delay the timely conclusion of the trial must be the result of a visible concerted effort orchestrated by the accused. Merely some adjournments sought by the counsel of the accused cannot be counted as an act or omission on behalf of the accused to delay the conclusion of the trial, unless the adjournments are sought without any sufficient cause on crucial hearings, i.e., the hearings fixed for examination or cross-examination of the prosecution witnesses, or the adjournments are repetitive, reflecting a design or pattern to consciously delay the conclusion of the trial. Thus, mere mathematical counting of all the dates of adjournments sought for on behalf of the accused is not sufficient to deprive the accused of his right to bail under the third proviso.
iii) The words hardened, desperate or dangerous have been couched in between conditions (i) and (iii) and therefore signify the same sense of gravity and seriousness as to the nature of the offence and character of the accused. The principle that the meaning of a word is recognized by its associates is traditionally expressed in the Latin maxim noscitur a sociis. A word or phrase in an enactment must always be construed in the light of the surrounding text, and their colour and meaning must be derived from their context Further, the words hardened, desperate or dangerous are to be understood collectively. The ejusdem generis principle is a principle of constriction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the

same limited character. For the said principle to apply, there must be sufficient indication of the category or word that can be properly described as the class or genus, which is to control the general words. The genus must be narrower than the general words it is to regulate "Dangerous" means harmful, perilous, hazardous or unsafe–someone who can cause physical harm or injury or death. "Hardened" is someone who is pitiless, hardhearted, callous or unfeeling and set in his bad ways and no longer likely to change, having a tendency of repeating the offence and is, thus, dangerous to the society. "Desperate" is someone who is reckless, violent and ready to risk or do anything;8 such person is, therefore, also dangerous to society. All the three words paint a picture of a person, who is likely to seriously injure and hurt others without caring for the consequences of his violent act. Therefore, for this exception to apply, there has to be material to show that the accused is such a person who will pose a serious threat to the society if set free on bail. In the absence of any such material, bail cannot be denied to an accused on the statutory ground of delay in conclusion of the trial.

Conclusion: i) The period of one year for the conclusion of the trial begins from the date of the arrest/detention of the accused and it is of little importance as to when the charge is framed and the trial commenced. mere mathematical counting of all the dates of adjournments sought for on behalf of the accused is not sufficient to deprive the accused of his right to bail under the third proviso.
ii) The act or omission on the part of the accused to delay the timely conclusion of the trial must be the result of a visible concerted effort orchestrated by the accused. Mere mathematical counting of all the dates of adjournments sought for on behalf of the accused is not sufficient to deprive the accused of his right to bail under the third proviso.
iii) See above.

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7. **Lahore High Court**
Malik Zafar Iqbal etc. Vs. The State etc.
Criminal Appeal No.25874/2021
Mr. Justice Muhammad Ameer Bhatti CJ, Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC5961.pdf

Facts: This appeal is directed against judgment of learned Special Judge, Anti-Terrorism Court in case registered for offences under sections 11-F, 11-H (2), 11-I(2), 11-J(2), 11-N of the Anti-Terrorism Act, 1997.

Issues: i) Whether a person can be punished for an act or omission, which was not penal offence at the time of its commission?
ii) Whether the Special Courts functioning under the ATA are also required to provide documents to the accused within seven days before the trial as stipulated in section 265-C Cr.P.C.?
iii) Whether a case can be remanded for retrial on the plea of defective charge, even if the prosecution has no case at all?

Analysis: i) The cardinal principle of criminal administration is nullum crimen nulla poena sine lege which means that "there can be no crime or punishment unless it is in accordance with law that is certain, unambiguous and not retroactive. The maxim further says that there should be no crime except according to predetermined, fixed law." In Nabi Ahmed and another v. Home Secretary, Government of West Pakistan, Lahore and 4 others (PLD 1969 SC 599) the Hon'ble Supreme Court of Pakistan explained the rationale underlying this precept as follows: "Law-abiding members of society regulate their lives according to the law as it exists at the time of their actions, and they expect the law to be steadfast and reliable." The international human rights law prohibits retrospective punishment. Article 11(2) of the Universal Declaration of Human Rights (1948), Article 15(1) of the UN Covenant on Civil and Political Rights (1966), Article 7 of the European Convention on Human Rights and the Constitutions of most of the countries around the globe contain similar interdiction. Article 1, section 9 of the American Constitution mandates that "no ex post facto law shall be passed." In Pakistan, Article 12(1) of the Constitution of 1973 also provides protection against retrospective punishment. S. M. Zafar explains that Article 12 does not deprive the legislature of its powers to give retrospective effect [to a law]. It prohibits convictions and sentences being recorded in the criminal jurisprudence under ex post facto laws. However, a procedural rigour including converting the bailable offence into non-bailable can be effected retrospectively. The protection under Article 12 of the Constitution of 1973 operates with reference to the time of act or omission.

ii) Section 19(7) of the ATA mandates that the Special Court shall, on taking cognizance of a case, proceed with the trial from day to day and decide it within seven days failing which the matter shall be brought to the notice of the Chief Justice of the High Court concerned for appropriate directions. And, section 19(8a) stipulates that non-compliance with the aforesaid timeline would render the presiding officer of the Special Court liable to disciplinary action by the concerned High Court. Section 32 gives the ATA an overriding effect and inter alia states that the provisions of the Code of Criminal Procedure, 1898, shall apply insofar as they are not inconsistent with it. The incongruity between section 265-C Cr.P.C. and section 19(7) of the ATA is un-ambivalent. As adumbrated, the purpose of section 265-C Cr.P.C. is to enable the accused to know the prosecution case and meet the allegations leveled against him. A preponderance of judicial decisions hold that the "seven days" requisite does not apply to the Special Courts under the ATA but they add that the accused must be afforded proper opportunity to prepare his defense and meet the requirements of fair trial under Article 10A of the Constitution of 1973.

iii) In our opinion, this would not be justified because the prosecution has no case at all. Section 232 Cr.P.C. deals with the effect of material error in the framing of charge and sub-section (2) thereof stipulates that if the court is of the opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Conclusion: i) A person cannot be punished for an act or omission, which was not a penal offence at the time of its commission/ omission.
ii) A preponderance of judicial decisions hold that the "seven days" requisite does not apply to the Special Courts under the ATA but they add that the accused must be afforded proper opportunity to prepare his defense and meet the requirements of fair trial under Article 10A of the Constitution of 1973.
iii) It would not be justified to remand the case on the plea of defective charge, when the prosecution has no case at all.

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8. **Lahore High Court**
Muhammad Sarwar v. The State etc.
Crl. Appeal No. 105580 of 2017
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC4929.pdf

Facts: Appellant/convict filed the criminal appeal against the judgment wherein he was awarded death penalty in murder case whereas the learned trial court sent murder reference under section 374 CrPC for confirmation of the sentence of appellant.

Issue: i) What is effect of delay in conducting post mortem examination?
ii) What is evidentiary value of chance witnesses if they cannot justify their presence at the place of occurrence?
iii) Any noticeable conflict between the medical and ocular account is destined to discredit the case of prosecution.

Analysis: i) For delay in the post mortem examination, an adverse inference can be drawn that the prosecution witnesses were not present at the time of occurrence and the intervening period had been consumed in fabricating a story after preliminary investigation and to wait for the relatives of the deceased, who were made witnesses subsequently, otherwise there was no justification for not dispatching the dead body to the mortuary and providing police papers with such delay.
ii) A chance witness, in legal parlance is the one who claims that he was present on the crime spot at the fateful time, albeit, his presence there was sheer chance as in the ordinary course of business, place of residence and normal course of events, he was not supposed to be present on the spot but at a place where he resides, carries on business or runs day to day life affairs. It is in this context that the testimony of chance witness, ordinarily, is not accepted unless justifiable reasons are shown to establish his presence at the crime scene at the relevant time. In normal course, the presumption under the law would operate about his absence from the crime spot. True that in rare cases, the testimony of chance witness may be relied upon, provided some convincing explanations appealing to prudent mind for his presence on the crime spot are put forth, when the occurrence took place otherwise, his testimony would fall within the category of suspect evidence and cannot be accepted without a pinch of salt.

iii) As a necessary consequence, it can unambiguously be held that glaring anomaly is discernable from the ocular account and medical evidence. It goes without saying that purpose of collecting medical evidence in a case against human body, primarily, is aimed at providing assistance to the court in arriving at just conclusion by using it for scrutinizing the ocular account. Any noticeable conflict between the medical and ocular account is destined to discredit the case of prosecution.

Conclusion: i) Effect of delay in conducting post mortem examination has discussed in para (i) of analysis.
ii) If chance witnesses fail to justify their presence at the place of occurrence then their evidence will be discarded.
iii) Any noticeable conflict between the medical and ocular account is destined to discredit the case of prosecution.

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9. **Lahore High Court**
Mazhar v. The State etc.
Crl. Appeal No. 104912 of 2017
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC6329.pdf

Facts: Appellants/convicts filed the criminal appeal against the judgment wherein Mazhar was awarded death penalty and Mst. Zahida Bibi was sentenced for life imprisonment.

Issue: i) What is effect of delay in lodging the FIR & conducting post mortem examination?
ii) What is effect if prosecution witnesses made dishonest improvements in their statements?
iii) Whether omission to take into possession the source of light from place of occurrence can damage the case of prosecution??

Analysis: i) Delay in setting the machinery of law into motion speaks volume against the veracity of prosecution version. Similarly, delay in the post mortem examination, an adverse inference can be drawn that the prosecution witnesses were not present at the time of occurrence and the intervening period had been consumed in fabricating a story after preliminary investigation and to wait for the relatives of the deceased, who were made witnesses subsequently, otherwise there was no justification for not dispatching the dead body to the mortuary and providing police papers with such delay.
ii) It is cardinal principle of law that any statement improved during trial is not worth relying, rather such improvement creates serious doubt about its veracity and credibility.

iii) Source of light is a material piece of evidence and omission to take into custody creates dent in the prosecution case.

Conclusion: i) Effect of delay in lodging the FIR & conducting post mortem examination have discussed in para (i) of analysis.
ii) If the prosecution witnesses made dishonest improvements in their statements then their statements are not reliable.
iii) Omission to take into custody the source of light from place of occurrence creates dent in prosecution story.

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10. **Lahore High Court**
Muhammad Ijaz. v. The State
Criminal Appeal No.115978-J of 2017
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC6628.pdf

Facts: The appellant was convicted for causing Qatl-i-Amd of his wife (daughter of the complainant) and was awarded death sentence as tazir and also asked to pay compensation u/s 544-A CrPC of Rs.5,00,000/- to the legal heirs of the deceased.

Issue: i) What presumption could be drawn where the post-mortem examination on the deceased is conducted after a long delay?
ii) What is the evidential value of the statement of a chance witness who fails to give any valid reason for his presence at the crime scene?
iii) What would be the effect where the prosecution withholds its best evidence?

Analysis: i) As such, there is delay of 12 hours in conducting the post-mortem examination on the dead body of the deceased. The abovementioned delay in conducting the post-mortem examination on the dead body of the deceased is suggestive of the fact that eye witnesses of the prosecution were not present at the spot at the relevant time and the said delay was consumed in procuring the attendance of fake eye witnesses.
ii) The occurrence had taken place in house of the appellant. From that place, the village of the complainant (PW.4) was situated at a distance of 10-kilometers, whereas, the village of other witness of ocular account (PW-5) was situated at a distance of 50-kilometers. As such, both the abovementioned eye witnesses are chance witnesses. The said witnesses have not given any valid reason for their presence in the house of occurrence at odd hours of the morning i.e. 05:00/06:00 a.m. It is by now well settled that if a chance witness is unable to establish the reason of his presence at the spot at the time of occurrence then his evidence is not worthy of reliance.
iii) Real sister of the deceased was married with the brother of the appellant and was inmate of the house where the occurrence had taken place. She was a natural eye witness of the occurrence. She was admittedly present in the house of

occurrence at the time of occurrence but she has not been produced in the witness box by the prosecution and as such, the best evidence has been withheld by the prosecution; therefore, an adverse inference under Article 129 (g) of the Qanun-e-Shahadat Order, 1984 can validly be drawn against the prosecution that had the abovementioned lady been produced in the witness box then she would not have favoured the prosecution case.

Conclusion: i) Such a delay will be suggestive of the fact that witnesses were not present at the crime scene and said delay is consumed in procuring the attendance of the eye witnesses.
ii) If a chance witness cannot establish the reason of his presence at the crime scene, he is not worthy of reliance.
iii) Under Article 129 (g) of the Qanun-e-Shahadat Order, 1984, an adverse inference can be drawn against the prosecution that the withheld evidence would not have favoured the prosecution case had it been produced in evidence.

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11. **Lahore High Court**
Muhammad Nawaz v. The State
Criminal Appeal No. No.99880 of 2017
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC6642.pdf

Facts: Allegedly the appellant along-with others had murdered the daughter of the complainant for refusing his hand in marriage. He was convicted for causing Qatl-i-Amd and was awarded death sentence and also asked to pay compensation u/s 544-A CrPC of Rs.2,00,000/- to the legal heirs of the deceased.

Issue: i) What presumption the court may draw where the post-mortem examination on the deceased is conducted after considerable delay?
ii) What would be the effect of sending the crime empty to the PFSA after the arrest of the accused?

Analysis: i) The delay in conducting the post-mortem examination on the dead body of the deceased of 11 hours and 45 minutes is suggestive of the fact that the eye witnesses of the prosecution were not present at the spot at the relevant time and the said delay has been consumed in procuring the attendance of fake eye witnesses.
ii) No date of arrest of the appellant has been brought on record by the prosecution through the statement of any of the prosecution witness. Under the circumstances, it is not determinable in this case that as to whether empty recovered from the spot was sent to the office of PFSA, Lahore after the arrest of the appellant or the same was sent to the said office before his arrest; hence it is not safe to rely upon the abovementioned prosecution evidence. It is by now well settled that if the empty is sent to the office of PFSA after the arrest of the

accused then it is not safe to rely upon the positive report of PFSA and recovery of weapon from the possession of the accused.

Conclusion: i) Such a delay will be suggestive of the fact that witnesses were not present at the crime scene and said delay is consumed in procuring the attendance of fake witnesses.
ii) If the empty is sent to the office of PFSA after the arrest of the accused then it is not safe to rely upon the positive report of PFSA and recovery of weapon from the possession of the accused.

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12. **Lahore High Court**
Muhammad Ashraf v. The State etc
Criminal Appeal No. No. 115212 of 2017
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC6654.pdf

Facts: Allegedly the appellant, on the grudge of refusing his hand in marriage, took the wife of the complainant to his house and along-with others murdered her. The appellant in his statement u/s 342 CrPC claimed that the deceased had illicit relations with him and she used to spend time in his house with him. He claimed that on the day of occurrence the complainant found him with her, and tried to kill him. He escaped from the crime scene, but the complainant himself killed the deceased. At the conclusion of trial the appellant was convicted for causing Qatl-i-Amd and was awarded death sentence and also asked to pay compensation u/s 544-A CrPC of Rs.3,00,000/- to the legal heirs of the deceased.

Issue: i) Whether the accused could be convicted for the offence of *Zina* upon the admission made by him in his statement u/s 342 CrPC?
ii) What would be the effect where the conduct of the eye-witnesses at the time of occurrence appears to be unnatural?

Analysis: i) Although the appellant admitted during his statement u/s 342 CrPC that he had illicit relations with the deceased but he has not admitted that they ever committed *Zina* with each other. The nature of above-mentioned illicit relationship is not determinable in this case because no detail of said relationship has been brought on the record by the defence, whereas, no such allegation has been leveled by the prosecution. Moreover, charge for the offence of *Zina* was also not framed by the trial Court.
ii) It is evident from the prosecution evidence that eyewitnesses stood like silent spectators at the time of occurrence and did not take a single step to rescue the deceased. The deceased was wife of the complainant (PW-5), whereas the other eye-witness (PW-6) were brother-in-law of the complainant and the given up PW was nephew of the complainant. They were closely related to the deceased. Had the abovementioned eye-witnesses been present at the spot at the time of

occurrence as claimed by them then they could have saved the deceased or apprehend the appellant at the spot. Their conduct is un-natural thus their evidence is un-trustworthy.

Conclusion: i) The nature of admitted illicit relationship is not determinable in this case because no detail of said relationship has been brought on the record by the defence, whereas, no such allegation has been leveled by the prosecution. Moreover, charge for the offence of *Zina* was also not framed by the trial Court. Therefore, accused cannot be convicted upon the admission made by him in his statement u/s 342 CrPC.
ii) Unnatural conduct of the eye-witnesses makes their evidence untrustworthy.

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13. **Lahore High Court**
Zahid Latif Bhatti v. Director General, LDA, etc.
W.P. No. 233477/2018
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC6552.pdf

Facts: The petitioner, an employee of LDA, was dismissed form service on being absent from duty. His appeal against the decision remained unsuccessful. Revision by him was also rejected since remedy of second appeal was not provided against the penultimate order. However, the Chief Minister on the application of the petitioner ordered his reinstatement on humanitarian grounds. However said order was not implemented by LDA; therefore he invoked constitutional jurisdiction of the High Court.

Issue: i) Whether the respondents (LDA) were bound to implement the order of reinstatement passed by the Chief Minister on humanitarian grounds?
ii) Whether under the Punjab Removal from Service (Special Powers) Ordinance, 2000 (the Ordinance), the Chief Minister was a 'competent authority' in respect of the petitioner who was serving in BPS-11 at the time of his dismissal?

Analysis: i) A perusal of directive issued by the Chief Minister Secretariat shows that reinstatement of the petitioner was directed on humanitarian grounds. The said ground being alien to law on the subject was not justified……The Hon'ble Court while relying on (2018 SCMR 1120), (2018 SCMR 1411), (2017 SCMR 192), & (2015 SCMR 1449), held that order passed by an Executive, how so high, is not enforceable by the public functionaries until and unless it has the backing of law. If the conduct of the respondents refusing to implement the directive issued by the Chief Minister is considered in the light of afore-referred judgments of the Hon'ble Supreme Court of Pakistan, there leaves no ambiguity that they performed their duties efficiently, thus no adverse opinion can be formed against them.
ii) Vide Notification No.SOR-III.1-33/94(A) dated 06.12.2000, the competent authority in respect of employees in different scales were determined. The Chief

Minister was not declared as competent authority in respect of the employees falling in BPS-1 to 15. Since the petitioner was serving in BPS-11 at the time of his dismissal from service, the Chief Minister could not be considered his competent authority.

Conclusion: i) The respondents were not bound to implement an order that had no backing of law.
ii) The Chief Minister was not the 'competent authority' in respect of the petitioner who was serving in BPS-11 at the time of his dismissal.

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14. **Lahore High Court**
Commissioner Inland Revenue v. M/s Monnoowal Textile Mills Ltd.
ITR No.94 of 2015
Mr. Justice Shahid Jamil Khan, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2021LHC5876.pdf

Facts: Instant reference application is against order dated 06.10.2014, passed by learned Appellate Tribunal Inland Revenue. The primary dispute is regarding apportionment of expenditures incurred and adjustments claimed by the respondent taxpayer, claimed to have drawn income from the manufacture and sale of yarn.

Issue: Whether apportionment of expenditures /deductions claimed by the taxpayer, in the instant case, is required to be carried out under section 67 and Rule 13 of the Rules or Rule 231 of the Income Tax Rules, 2002?

Analysis: Reliance of the Appellate Tribunal on Rule 231 is misconceived. It is discernable from bare reading of Rule 231, ibid, that same relates to computation of export profits relatable proportionately to the export sales, having no relevance to the case at hand. In terms of the ratio settled in the case of "Commissioner Inland Revenue v. Messrs Quality Textile Mills Ltd." (2013 PTD 2095) = [(108) Tax 137 (H.C.Kar)], Rule 231 and Rule 13 are distinct, claiming independent character / attributes, and each one is attracted to different set of situations / circumstances. Section 67, read with Rule 13, provides mechanism for apportionment of expenditures, with respect to class or classes of income, as classified therein. In the instant case income was derived from local sales, supplies and exports.

Conclusion: In view of the above, we firmly opine that apportionment of expenditures, in the instant case, is required to be carried out under section 67 and Rule 13 of the Rules. And Rule 231 has no application in the context of the expenditures / deductions claimed by the taxpayer.

15. **Lahore High Court**
Jamshed Iqbal Cheema v. The Returning Officer, NA-133 and others
Election Appeal No.07/R OF 2021
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC6354.pdf

Facts: The judgment decides the connected appeals against the orders passed by the District Election Commission/Returning Officer against the qualification of the proposer pertaining to subscription of the nomination papers of the appellant and hence sought rejection of the nomination papers in view of Section 62(9)(b) of the Elections Act, 2017.

Issue: i) Whether rejection of nomination papers is justified for the reason that either of the subscribers (proposer or seconder) is not enrolled as voter in the Electoral Roll of the constituency?
ii) Whether this defect is substantial or curable?

Analysis: i) It was opined by the Appellate Tribunal by interpreting the relevant provisions of the Elections Act, 2017 i.e. Section 60(1), 60(4) and 62(9)(b)(i), that the subscriber should be satisfied that his name is enrolled in the Electoral Roll of the same constituency. In fact it requires an extra qualification for proposer or seconder to be an enrolled voter in Electoral Roll. Hence the mandate of law requires a candidate ought to be proposed by a voter existing in the Electoral Roll of "the constituency" where he intends to propose or second a candidate not of any other constituency.
ii) The Hon'ble Tribunal while referring to the case precedents reported as **PLD 2016 Supreme Court 944** and **PLD 2007 Supreme Court 277** observed that provisions relating to proposer and seconder of a candidate in the Election Act, 2017 are mandatory in nature, and any defect in respect thereof is a defect of substantial nature and not curable as such.

Conclusion: i) A candidate ought to be proposed by a voter existing in the Electoral Roll of "the constituency" where he intends to propose or second a candidate not of any other constituency.
ii) if there is any defect is this regard then the same would be substantial and not curable.

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16. **Lahore High Court**
Fayyaz-ul-Haq etc. v. Ghulam Nabi (deceased)
C.R.No.384/2012
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2021LHC5770.pdf

Facts: The petitioners filed a suit for declaration alleging therein that they are owners in possession of suit land. The petitioners and their mother executed a power of attorney in favour of defendant No.1, but later on revoked it.

Issues: Whether a general power of attorney, executed against paid consideration, can be revoked?

Analysis: Under Section 202 read with Section 206 of the Contract Act, 1872, the principal is duty bound to give notice to the agent before cancellation of the power of attorney. The conjoint reading of the above provisions of law clearly provides that a power of attorney could only be rescinded after serving a notice upon the attorney and any revocation of the attorney-ship without notice to the attorney would be illegal. Further here in this case, the power of attorney was issued against receipt of consideration amount of land from the attorney and necessary dues are paid and document was got registered as per law and same is liable to be treated as a sale deed, as such, said power of attorney could not be revoked until and unless an adverse declaration is obtained from the competent court of jurisdiction.

Conclusion: A general power of attorney, executed against paid consideration, cannot be revoked until and unless an adverse declaration is obtained from the competent court of jurisdiction.

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17. **Lahore High Court**
Abdul Rehman Khan etc. v. The Member (Judicial-V)/Chief Settlement Commissioner etc.
W.P.No.14-R/2011
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2021LHC5777.pdf

Facts: Through this writ petition, the petitioners have challenged the order passed by the Member Judicial-V/Chief Settlement Commissioner, Board of Revenue, Punjab who cancelled the allotment from the name of, predecessor-in-interest of the petitioners, and resumed the land in favour of the state.

Issues: i) Whether an Indian national can seek declaration in Pakistan?
ii) Whether an authority can reverse an erroneous or illegal order, earlier passed by it?

Analysis: i) Predecessor of the petitioners, was a permanent resident of India, as such, he as well as his legal heirs are foreigners, who are also residents of the enemy state, thus by any stretch of imagination, cannot seek a decree to declare them as legal heirs of an Indian Citizen from a court in Pakistan.

ii) Section 21 of the General Clauses Act, 1897 confers an inherent jurisdiction to an authority which has passed the order to reverse the erroneous or illegal order earlier passed by it. Similarly if any benefit has been obtained from authority by practicing misrepresentation or fraud, the same forum is vested with inbuilt jurisdiction to undo the wrong. In this regard the Hon'ble Supreme Court of Pakistan in a case titled as Muhammad Baran and others v. Member (Settlement and Rehabilitation) Board of Revenue Punjab and others (PLD 1991 SC 691) has

held that where the allotment order made by the authorities was illegal, without jurisdiction, based on fraud and forgery, in that eventuality the same authority can undo such illegal order either on its own motion or on the information received to it through application. In the case of obtaining allotment of evacuee land through fraud, the settlement authority may reverse such order of allotment and in such like matter the superior Courts can withhold the exercise of their discretionary writ jurisdiction to annul the order of authority, even though it was clearly without jurisdiction.

Conclusion: i) Indian nationals, who are also residents of the enemy state, cannot seek a decree to declare them as legal heirs of an Indian Citizen, in Pakistan.
ii) An authority can reverse an erroneous or illegal order, earlier passed by it.

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18. **Lahore High Court**
Malik Allah Ditta (deceased) through his legal heirs etc. v. Member, Board of Revenue etc.
I.C.A. No.761/2014
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2021LHC6673.pdf

Facts: The appellants and others filed an application before the Chief Settlement Commissioner, for the purchase of the evacuee land. The application of the appellant was partially accepted by the Notified Officer who allowed the appellants to purchase the evacuee land at the prevailing market price plus 50% penalty.

Issues: i) Who is eligible for the offer of sale of evacuee land under the Evacuee Law / Policy?
ii) Whether the Notified Officer has the jurisdiction to sell the evacuee agricultural land to sitting occupant through a private treaty?

Analysis: i) The conjoint reading of Section 3(1)(b) of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 with Chapter II para 2 Part Second (Iv), Chapter 3, para 2 as well as Proviso to para 2 and Chapter 4 of the Scheme as well as the policy notification dated 02.12.1998 leads to conclude that the unallotted/ unoccupied evacuee land shall be disposed of only through unrestricted open public auction. But for the un allotted occupied land a modus operandi has been described in Chapter 1, Item No.ii containing qualification for the purchaser of the evacuee land i.e. first stipulation is that the un allotted occupied land should be offered for sale to such person who was in possession of said land for four harvests immediately preceding Kharif, 1973 unless an order of ejectment has been passed against him and the second stipulation for sale of the un allotted occupied land to the occupant was that his total holding including the evacuee land occupied by him shall not exceed 12 ½ Acres (100 Kanals) as subsisting holdings provided in Land Reforms Ordinance, 1972. Any disqualification of occupants as stated above, the land shall be disposed of through un-restricted open public auction. The target date for exercising the option to purchase the land

was also fixed in the above said policy but from perusal of the record, it transpires that the appellants filed application to the Chief Settlement Commissioner on much after the lapse of the target date. Moreover it was mandatory for the appellant to prove that their entire land owned or occupied was below the ceiling of subsisting holding as envisaged under Land Reforms Ordinance, 1972, but no believable and trustworthy record has been produced which flaw amounts to withholding of material information, thus an adverse presumption validly goes against them.

ii) Admittedly after the repeal of evacuee laws with effect from 01.07.1974 by promulgation of Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 all the evacuee land under Section 3 of the Act ibid by operation of law stood vested with the provincial government against the paid consideration thus the said land has attained the status of public property and its disposal has to be made as prescribed under the law, scheme policy on the subject and it is settled that when law requires a thing/act to be done in a particular manner that must be done according to the described modus operandi otherwise it wears no sanctity and effectiveness in the eyes of law. Admittedly the jurisdiction of the Notified Officer has been restricted to the pending proceedings as envisaged under Section 2 of the Act, 1975 and he has no unlimited power rather he had to exercise its jurisdiction with the precincts prescribed under the law regulations, rules, policies and instructions on the subject. Any unwarranted act of a state functionary is liable to be set at naught without any hesitation. Undoubtedly the public functionaries are the ostensible custodians of the state assets and they cannot be allowed to dole the state assets upon their cherished / blue eyed persons at their own whims and fancies.

Conclusion: i) See above

ii) The Notified Officer has no jurisdiction to sell the evacuee agricultural land to sitting occupant through a private treaty?

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19. **Lahore High Court**
Abdul Hafeez v. The State etc.
Crl. Appeal No. 520 of 2012
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2021LHC6539.pdf

Facts: The appellant was convicted under Section 302 (b) PPC and sentenced to life imprisonment in a case of unseen murder.

Issue: What is the standard of proof in a case completely based upon circumstantial evidence and involves capital sentence?

Analysis: In order to rely upon circumstantial evidence, the apex Court in Naveed Asghar v. The State (PLD 2021 SC 600) has laid down stringent principles, in particular, in cases involving capital punishment. It has been time and again held that such type of evidence must be of the nature, where all circumstances, must be so inter-

linked, making out a single chain, an unbroken one where one end of the same touches the dead body of the deceased and the other at the neck of the accused. If, on the facts and circumstances proved, no hypothesis consistent with the innocence of the accused person can be suggested, the case is fit for conviction of the accused person on such conclusion; however, if such facts and circumstances, can be reconciled with any reasonable hypothesis compatible with the innocence of the appellant, the case is to be treated one of insufficient evidence, resulting in acquittal of the accused person.

Conclusion: If, on the facts and circumstances proved, no hypothesis consistent with the innocence of the accused person can be suggested, the case is fit for conviction of the accused person on such conclusion.

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20. **Lahore High Court**
Muzaffar Bhutta v. The State etc.
Crl. Misc No. 5754-B/2021
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2021LHC6547.pdf

Facts: The petitioners sought post-arrest bail in a case registered under Sections 409, 420, 467, 468, 471 PPC and Section 5(2) of the Prevention of Corruption Act, 1947.

Issue: Whether allegations of preparing and using of a false report regarding status of land and reporting it as "null chahi" without any other proof of giving or receiving corruption is sufficient to deny bail to the petitioners?

Analysis: The petitioners are though named in the crime report yet no role whatsoever for demanding, receiving or extorting even a single penny from any corner has been brought on record. Though there was allegation of preparing and using forged documents in getting allotted the state land yet no forensic report is available on record in this regard and as such, the application of Section 467 PPC to the facts and circumstances of the case shall be taken into consideration by the learned trial Court after recording the evidence. The remaining offences, with which the petitioners have been charged, do not attract the prohibitory limb of Section 497 Cr.P.C.

Conclusion: Petitioners are entitled to bail since no evidence regarding receiving or extorting money for preparation of alleged forged report and forensic report in this regard is available.

21. **Lahore High Court**
Abid Hussain v. Additional Sessions Judge etc.
Transfer Application No.62606/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC5616.pdf

Facts: This petition under section 526 Cr.P.C 1908 seeks indulgence of the Hon'ble Court to transfer application filed under section 22 A CrPC 1908 to some other Ex-officio Justice of Peace in the District.

Issue: Scope of Section 526(1) Cr.P.C qua the concept of a "court".

Analysis: In order to determine whether a particular forum is a court, it is necessary to consider the powers, functions and duties performed by it. The Hon'ble Court while referring to the chain of authorities from other jurisdictions as well as ours along with excerpts from acclaimed legal commentaries observed, inter alia, that pendency of lis, duty to hear the parties and pronouncement of definitive judgment are essential attributes of court. Hence the linchpin characteristic of a court is indeed exercise of judicial power. Pronouncement of a definitive judgment is the sine qua non of a court and a judgment which is in fact delivered by the presiding officer acting judicially. The definitions of "Judge" and "Court Justice" in sections 19 and 20 of the Pakistan Penal Code, 1860, are incorporated in it by reference through section 4(2) Cr.P.C. The terms "Judge" and "Court" are often used interchangeably but the distinction between them is subtle. A Judge is an individual while the Court is the seat of justice as an institution. The proceedings under sections 22-A & 22-B before the Sessions Judge or the Additional Sessions Judge do not become judicial merely because they are judges and exercise judicial power in other matters. The Hon'ble Court while referring to the celebrated judgments on this point reported as PLD 2016 SC 581 and PLD 2005 Lahore 470 observed that the functions of the Ex-officio Justice of Peace described in clauses (i), (ii) and (iii) of section 22-A(6) Cr.P.C. are quasi-judicial.

Conclusion: It was most aptly opined by the Hon'ble Court that the Ex-officio Justice of Peace is not a court within the meaning of section 20 PPC read with section 4(2) Cr.P.C. As section 526 Cr.P.C. empowers the High Court to transfer cases pending before the criminal courts only.

22. **Lahore High Court**
Shaheen Merchant v. Federation of Pakistan/National Tariff Commission and others
W.P. No. 62992 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC6366.pdf

Facts: The petitioner was aggrieved of Final Determination made by the Commission under Anti-Dumping Duties Act, 2015 and filed an appeal there against in a collective capacity before the Appellate Tribunal under Section 70 of the Act, which remained undecided for three years and the petitioner sought direction of the High Court to the Appellate Tribunal for decision on his pending appeal expeditiously and for grant of interim injunction meanwhile.

Issue: i) Whether the Anti-Dumping Act, 2015 is a time-specific legislation under which the Appellate Tribunal is bound to decide appeals in a time-bound manner?
ii) Whether a Final Determination made by Commission under Anti-Dumping Act is final and can be given effect when the same is subject matter of pending appeal before the Tribunal?

Analysis: i) Section 70 of the Act specifically stipulates that if an interested party files an appeal against the initiation of investigation or a preliminary determination as provided under Section 70(1)(i), the Tribunal shall issue its decision within thirty days of the filing of such an appeal as laid down under sub-section 3 of Section 70. On the other hand, sub-section 5 of Section 70 specifically stipulates that any other appeal filed by an interested party against an affirmative or negative final determination, against a final determination pursuant to a review, against an order of the Commission for termination of investigation and against a determination of the Commission under Section 52 of the Act, must be decided by the Appellate Tribunal as expeditiously as possible but not later than forty-five days from the date of receipt of such an appeal. The purpose of specifically providing a time-frame for the Tribunal to decide the appeal is to make the Appellate Tribunal function within the time-specific bounds because the purpose and intent behind codifying the duration of time-frame is to ensure that the appeal before the Tribunal must be decided expeditiously as mandated under Article 37(d) of the Constitution. A careful glance of Section 70 clearly unveils that time is essence of the Appellate procedure whether it be before the Appellate Tribunal or before the High Court against the decision of the Tribunal as sub-section (13) also requires that the High Court shall render a decision within ninety days of receiving an appeal from the decision of the Appellate Tribunal. The irresistible conclusion that the Tribunal under the Act is a time-specific forum with a time-bound mandate to decide the Appeals, finds further strength from the Sub-section (6) of Section 70 of the Act wherein it is provided that the Appellate Tribunal shall hear the appeal from day-to-day and its significance as such is further heightened from perusal of Section 69 of the Act, wherein it is provided that even the absence of a

Chairman, or the temporary incapacity of the Chairman, shall not affect the other members' ability to act as the Appellate Tribunal which remains competent to exercise its powers and authority under the Act.

ii) Section 70 of the Act is an exhaustive provision, which does not only provide the substantive right of appeal and time limitation for preferring and decision of the same but it also lays down the procedural requirements for carrying out the whole appellate procedure. It stipulates a comprehensive scheme of exercising Appellate Jurisdiction by the Appellate Tribunal constituted under Section 64 of the Act against appeal preferred by an interested party either against initiation of investigation, preliminary determination or final determination and also provides limitation to as well as it also provides the procedure for hearing the same including chalking out the requirements for a decision of the Tribunal. Moreover, sub-section (13) lays down the substantive right of appeal against the decision of the Appellate Tribunal to the High Court. This whole scheme of remedial procedure is clearly suggestive of the fact that a Determination even though a Final Determination under Section 39 is not absolute and is open for scrutiny before the Appellate Tribunal if any interested party, dissatisfied with the same, prefers an appeal before it. It is further evident that the decision of the Appellate Tribunal pronounced under sub-section (9) of Section 70 is further open to judicial examination by the High Court under sub-section (13) if an interested party still feels dissatisfied prefers so.

Conclusion: i) The Appellate Tribunal under the Act is a time-specific forum with a time-bound mandate to decide the Appeals within specified time.

ii) When the statute has provided specific remedies of appeal against Final Determination, already impugned before the Appellate Tribunal and when right of another appeal is still available after the decision of the Appellate Tribunal, then in such a situation, the impugned Final Determination cannot be given effect because doing so will not only frustrate the pending appeal before the Tribunal but it will also jeopardize the whole purpose of provision of remedy of Appeal under the Act.

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23. **Lahore High Court**
Saghir Ahmed v. Ambassador USA Embassy Islamabad
Diary No. 139270 dated 20.09.2021
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC5948.pdf

Facts: This case put up as an objection case before Court filed by petitioner, seeking direction in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, to be issued to the Ambassador of USA Embassy Islamabad, Pakistan, who has been impleaded as sole respondent in the matter, to issue visa and provide air tickets to the petitioner and his family members to travel to the United States of America.

Issue: i) Whether under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 High Court can direct the Ambassador of USA Embassy, Islamabad, to issue visa to the petitioner?

ii) Whether immunity provided to the Ambassador as diplomatic agent in terms of Section 86 (A) *of CPC* against suits shall also be applicable to constitutional petitions filed against him?

Analysis: i) Court can only issue direction in the nature of mandamus to the persons mentioned in the definition of "person" under Article 199 (5) of the Constitution of Islamic Republic of Pakistan, 1973, which unless the context otherwise requires includes anybody politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or Tribunal, other than the Supreme Court, a High Court or a Court or Tribunal established under the law relating to Armed Forces of Pakistan. The afore-referred definition provides that constitutional petition can be exercised against the persons mainly working in connection with the affairs of the Federation, Province or Local Government or represent the State or its departments or courts subordinate to the superior courts whereas constitutional petition is not maintainable against Supreme Court of Pakistan, High Courts or Tribunals established under law relating to Armed Forces of Pakistan, which have been expressly excluded. Neither the Ambassador nor the Embassy fall in any category provided above that is subject to Writ jurisdiction of this Court. The petitioner's case does not fall within the jurisdiction of this Court provided under Article 199 of the Constitution, consequently, Writ of Mandamus cannot be issued.

ii) Subsection 6 of Section 86.A of CPC defines that diplomatic agent in relation to a State means the Head of the Mission of the Sending State in Pakistan and includes the members of the staff of that mission having diplomatic rank. This means that not only the Ambassador but also the staff members having diplomatic ranks are immune from being proceeded against in the jurisdiction of this Court except for the exceptions provided in the Section 86.A of the CPC and Article 31 of the Vienna Convention. The Diplomatic and Consular Privileges' Act, 1972, Vienna Convention and the CPC provide immunity to the diplomatic agents against being proceeded in the jurisdiction of the courts including Writ Petitions as the principles of the CPC, which unless specifically barred, are applicable to constitutional petitions as well, whatever may be the nature of jurisdiction, as laid down in PLD 1970 Supreme Court 1 which principle has been reiterated in PLD 1992 Supreme Court 723 and PLD 2004 Supreme Court 70 hence, the immunity provided to the Ambassador as diplomatic agent in terms of Section 86 (A) supra against suits shall also be applicable to constitutional petitions filed against him.

Conclusion: i) The petitioner's case does not fall within the jurisdiction of this Court provided under Article 199 of the Constitution, consequently, Writ of Mandamus cannot be issued.

ii) The immunity provided to the Ambassador as diplomatic agent in terms of Section 86 (A) of CPC against suits shall also be applicable to constitutional petitions filed against him.

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24. **Lahore High Court**
Zepyr Agro Chemical (Pvt) Ltd. v. East West Insurance Company Limited
R. F. A. No. 192 of 2019 / BWP
Mr. Justice Anwaarul Haq Pannun, Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC5848.pdf

Facts: A fire broke out in the insured premises of the Appellant. The Appellant submitted an application for the recovery of an insurance claim under Fire Insurance Policy against respondent. But the application of the petitioner was dismissed by the Insurance Tribunal, relying upon Surveyor (appointed by respondent) report.

Issues: i) What is the meaning of term "Godown" in reference to insurance policy?
ii) Whether a document can be relied upon, which is not proved in accordance with law?

Analysis: i) The only logical inference is that all the insured stock which was stored or kept within covered areas in the insured premises was duly insured under the Policy. The word "Godown" would be given a general and plain meaning to cover all constructed rooms and halls where the insured stock was kept within four walls of the insured premises.

ii) The respondent did not produce the Surveyor, as a witness and as such the insurance report (prepared by Surveyor) was not proved in accordance with the requirements of Qanun-i-Shahadat Order, 1984. No opportunity was provided to the appellant to cross examine him regarding the interpretation put forward by him and confront him with the Survey Report regarding various allegations of fact recorded therein… Having observed as such, it is strange that the Insurance Tribunal without considering that the Surveyor was not produced at all based its judgment upon the Survey Report of the Surveyor which was neither admissible nor had any evidentiary value especially when the Appellant had consistently disputed the same.

Conclusion: i) The word "Godown" would be given a general and plain meaning to cover all constructed rooms and halls where the insured stock was kept within four walls of the insured premises.
ii) A document, which is not proved in accordance with law, cannot be relied upon.

25. **Lahore High Court**
Muhammad Yousaf v. The State, etc.
Cr. Appeal No.950 of 2016
Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC5816.pdf

Facts: Appellant has challenged his conviction and sentence awarded to him by the learned Additional Sessions Judge, in case registered u/s 302, PPC.

Issue: i) What is the effect of deliberate and dishonest improvement made by a witness in a statement to strengthen the prosecution?
ii)What is the evidentiary value of chance witness's evidence, who remained failed to explain the reasons of his presence at crime scene?
iii) What is the evidentiary value of recovery when no grouping of the blood is made with the bloodstained clothes of the deceased?

Analysis: i)There is no cavil with the proposition that deliberate and dishonest improvement made by a witness in a statement to strengthen the prosecution case, cause serious doubts in his veracity and makes him un-trustworthy and un-reliable. It is quite unsafe to rely on testimony of such witness even any fact deposed by him other than improvement, unless it receives some corroboration from other piece of reliable evidence.
ii) In all eventualities, the eye-witnesses are categorized as chance witnesses. Both the eye-witnesses were not only closely related but they were also chance-witnesses, who have failed to explain regarding the reasons of their presence at the crime scene. So, without having corroborative evidence to support the version of the chance-witnesses, it has to be excluded from the consideration.
iii) The august Supreme Court of Pakistan while highlighting the status of such like recovery in case of "Irfan Ali v. The State" (2015 SCMR 840) had observed that "When no grouping of the blood was made with the bloodstained clothes of the deceased to create a nexus between the two, the same is of no help to the prosecution". Similarly in case of "Khalid Javed v. the State" (2003 SCMR 1419), the august Supreme Court of Pakistan discarded the prosecution evidence of recovery of bloodstained weapon of offence i.e. dagger and knife and bloodstained clothes of the accused persons in absence of matching report of the bloodstained with the blood grouping of the deceased. Since no 'matching report' of the blood found on the recovery of weapon of offence danda (موھلہ) in this case with the clothes of the deceased and the bloodstained earth is available on record, so, the recovery in this case cannot be considered as the corroborative piece of evidence against the appellant.

Conclusion: i) Deliberate and dishonest improvement made by a witness in a statement to strengthen the prosecution case, cause serious doubts in his veracity and makes him un-trustworthy and un-reliable.
ii) Without having corroborative evidence to support the version of the chance-

witnesses, it has to be excluded from the consideration.
iii) When no grouping of the blood was made with the bloodstained clothes of the deceased to create a nexus between the two, the same is of no help to the prosecution.

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26. **Lahore High Court**
The State v. Muhammad Aslam
Murder Reference No.08 of 2017
Muhammad Aslam v. The State
Criminal Appeal No. 75 of 2017 etc
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6484.pdf

Facts: In an occurrence induced by a property issue, a person was murdered while others were injured on both sides. Complainant party put the entire blame on the accused side, while accused side put all the blame for occurrence on the complainant side.

Issue: How to deal with a murder case where there was free fight and it is not ascertainable that who was aggressor?

Analysis: The circumstances of the case do not prove the defence plea or the aggression of complainant party rather it being a free fight and a melee, which undoubtedly was not an arranged occurrence of either party rather both sides under compelled circumstances were to participate in it. It is common that in such like cases each party hesitates to bring the true facts on record to prove the aggression of his opponent. The prosecution has not brought satisfactory evidence to establish aggression of the accused to come to a definite conclusion to give verdict of the correctness of prosecution version or plausibility of defence plea. Exception 4 of the erstwhile section 300 of the PPC covered those cases where an offender causes death „without premeditation in a sudden flight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner'. The help of Exception 4 can be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. It is to be noted that the word 'fight' occurring in Exception 4 contained in the erstwhile section 300, P.P.C. is not defined in PPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down. 'Sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the exception more appropriately applicable would be Exception 1. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is

difficult to apportion the share of blame which attaches to each fighter. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. Exception 4 provided in the erstwhile provisions of section 300, P.P.C. jurisprudentially must be reckoned as a humane provision accepting the fact that even the most rational of men may under the heat of passion do acts which they may not have done or would not do if saner faculties were to prevail. To such persons, law in a humane manner, permits mitigation if and only if it is proved that the passion happened to run in a sudden fight upon a sudden quarrel.

Conclusion: The help of Exception 4 can be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed.

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27. **Lahore High Court**
Muhammad Imran v. The State
Criminal Appeal No.176-J of 2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6443.pdf

Facts: For an occurrence of double murder, accused was tried and PW made a statement against the accused in evidence. However before cross examination, the PW died.

Issue: What is the evidentiary value of un-cross examined statement of a witness who died before cross examination?

Analysis: There is no provision in the Qanun-e-Shahadat Order which specifically makes such piece of evidence inadmissible…Appellant simply did not cross examine PW till he remained alive, though PW kept appearing before the learned trial court for the said purpose….The evidence of deceased PW in the form of examination-in-chief, was an admissible piece of evidence, which could be legally taken into consideration by the Court in the peculiar facts and circumstances.

Conclusion: The un-cross examined statement of deceased PW in the form of examination-in-chief, was an admissible piece of evidence.

28. **Lahore High Court**
Fakhar Abbas v. The State
Criminal Appeal No. 209 of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6405.pdf

Facts: The brother of complainant was allegedly murdered when he was sleeping in cattle shed in the presence of witnesses.

Issue: What is rigor mortis?

Analysis: 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. In Chapter 15 „POST-MORTEM CHANGES AND TIME SINCE DEATH", from page 351 to page 352 of Rai Bahadur Jaising P. Modi's A Textbook of Medical Jurisprudence and Toxicology (26th Edition 2018) it has been discoursed as under:-

> "Rigor mortis generally occurs, while the body is cooling. It is in no way connected with the nervous system, and it develops even in paralyzed limbs, provided the paralyzed muscle tissues have not suffered much in nutrition. It is retarded by perfusion with normal saline. Owing to the setting in of rigor mortis all the muscles of the body become stiff, hard, opaque and contracted, but they do not alter the position of body or limb. A joint rendered stiff and rigid after death, if flexed forcibly by mechanical violence, will remain supple and flaccid, but will not return to its original position after the force is withdrawn; whereas a joint contracted during life in cases of hysteria or catalepsy will return to the same condition after the force is taken away. Rigor mortis first appears in the involuntary muscles, and then in the voluntary. In the heart it appears, as a rule, within an hour after death, and may be mistaken for hypertrophy, and its relaxation or dilatation, atrophy or degeneration. The left chambers are affected more than the right. Postmortem delivery may occur owing to contraction of the uterine muscular fibres. In the voluntary muscles rigor mortis follows a definite course. It first occurs in the muscles of the eyelids, next in the muscles of the back of the neck and lower jaw, then in those of the front of the neck, face, chest and upper extremities, and lastly extends downwards to the muscles of the abdomen and lower extremities. Last to be affected are the small muscles of the fingers and toes. It passes off in the same sequence. However, according to H.A. Shapiro this progress of rigor mortis from proximal to distal areas is apparent only, it actually starts in all muscles simultaneously but one can distinguish the early developing and fully established stage, which gives an indication of the time factor. Time of Onset.- This varies greatly

in different cases, but the average period of its onset may be regarded as three to six hours after death in temperate climates, and it may take two to three hours to develop. Duration-In temperate regions, rigor mortis usually lasts for two to three days. In northern India, the usual duration of rigor morts is 24 10 48 hours in winter and 18 to 36 hours in summer. According to the investigations of Mackenzie, in Calcutta, the average duration is nineteen hours and twelve minutes, the shortest period being three hours, and the the longest forty hours." In Colombo, the average duration is 12 to 18 hours. When rigor mortis sets in early, it passes off quickly and vice versa. In general, rigor mortis sets in one to two hours after death, is well developed from head to foot in about twelve hours. Whether rigor is in the developing phase, established phase, or maintained phase is decided by associated findings like marbling, right lower abdominal discolouration, tense or taut state of the abdomen, disappearance of rigor on face and eye muscles. If on examination, the body is stiff, the head cannot be fixed towards the chest, then in all probability, the death might have occurred six to twelve hours or so more before the time of examination.

Conclusion: 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.

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29. **Lahore High Court**
Muhammad Imran v. The State and another
Criminal Appeal No. 503 of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6242.pdf

Facts: Appellant filed criminal appeal against the judgment wherein he was awarded death sentence in a murder case whereas learned trial court sent reference under section 374, Cr.P.C. for the confirmation or otherwise of death sentence awarded to him.

Issue: i) What is the effect if the name of witness is not mentioned in the inquest report who was present at the time of the preparation of it and also did not accompany deceased to the hospital for postmortem examination?
ii) Whether the presence of witnesses becomes doubtful when the witnesses despite the claiming their presence at place of occurrence made no effort to save the life of the deceased?
iii) What is the purpose and effect of causing delay in conducting the postmortem?

Analysis: i) The name of (PW-8) was not mentioned in column No.4 or at page 4 of the inquest report as prepared by the (PW-7) as being the person who was present near the dead

body at the time of the preparation of the inquest report Additionally, (PW-8) did not accompany the dead body of the deceased to the hospital for post mortem examination. This conduct of (PW-8) where he made no effort to take deceased to the hospital and also did not accompany the dead body of the deceased to the hospital, convincingly establishes that the said witness was not present at the place of occurrence, at the time of occurrence and arrived there subsequently.

ii) No person having ordinary prudence would believe that such closely related witnesses would remain watching the proceedings as mere spectators without doing anything to rescue the deceased or to apprehend the assailant. It is strange that when the witnesses had the desire to apprehend the accused after the occurrence and were not fearful of the assailant at that time, then why they could not stop him from committing the occurrence. The allowance of prosecution witnesses to the assailant of causing the death of their near and dear relative speaks loudly that if witnesses had been present at the place of occurrence, at the time of occurrence, then they would have definitely intervened and prevented the assailant from murdering their dear one. Such behavior, on part of the witnesses, runs counter to natural human conduct and behavior. We thus trust the existence of this fact, by virtue of the Article 129 of the Qanun-e-Shahadat Order, 1984, that the conduct of the witnesses, as deposed by PW-8, was opposed to common course of natural events, human conduct and that the witnesses were not present at the time of occurrence at the crime scene.

iii) No explanation was offered to justify the said delay in conducting the post mortem examination. This clearly establishes that PW-8 claiming to have seen the occurrence was not present at the place of occurrence, at the time of occurrence and the delay in the post mortem examination was due to the time used to procure his attendance and formulate a false narrative after consultation and discussion. It has been repeatedly held by the august Supreme Court of Pakistan that such delay in the post mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person..

Conclusion: i) The name of witness is not mentioned in the inquest report who was present at the time of the preparation of it and also did not accompany deceased to the hospital for postmortem examination, convincingly establishes that the said witness was not present at the place of occurrence, at the time of occurrence and arrived there subsequently.

ii) See para (ii) of analysis.

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.

30. **Lahore High Court**
Sabir Hussain v. The State
Criminal Appeal No. 699-J of 2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6093.pdf

Facts: The appellant was tried by the learned Additional Sessions Judge in respect of an offence under section 302 PPC for committing the Qatl-i-Amd. The learned trial court vide judgment dated convicted him to death penalty on two counts with direction to pay compensation. He lodged Criminal Appeal assailing his conviction and sentence. The learned trial court submitted Murder Reference seeking confirmation.

Issue: i) Whether death of the unborn child with age of 32-34 weeks satisfies the provisions of section 338-B, P.P.C. or section 302 PPC?
ii) Whether quantum of sentence may be determined on the basis of mitigating circumstances?

Analysis: i) Admittedly section 338-B, P.P.C., deals with "Isqat-i-janain". If 32-34 weeks old child died in consequence of injuries sustained by mother in womb, it does not attract the provisions of section 338-B, P.P.C., because as per medical jurisprudence, heartbeat starts after 2 months, while after 180 days (six months) the child becomes mature and in our part of the world, often, even after seven months women give birth to healthy babies. Hence, in this view of the matter it can be ascertained that 'fetus' having remained more than 6 months in the womb of his mother falls within the definition of 'child'. Analogy in this regard can be drawn from Article 128(1) of the Qanun-e-Shahadat Order, 1984. From the above provision of the Article 128(1) of the Qanun-e-Shahadat Order, 1984 only inference can be drawn is that after six months of pregnancy, a female can give birth to a child. As far as Islamic concepts on this issue are concerned, from the books of 'Ahadiths' it is established that after 120 days, Allah (Almighty) blows soul into the fetus.
ii) It is well recognized principle by now that the question of quantum of sentence requires utmost attention and thoughtfulness on the parts of the Courts. 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. If a specific motive has been alleged by the prosecution then it is duty of the prosecution to establish the said motive through cogent and confidence inspiring evidence and non-proof of motive may be considered a mitigating circumstance in favour of the accused.

Conclusion: i) If 32-34 weeks old child died in consequence of injuries sustained by mother in womb, it does not attract the provisions of section 338-B, P.P.C.
ii) Quantum of sentence may be determined on the basis of mitigating circumstances.

31. **Lahore High Court**
Zahid Murad v. The State and another
Criminal Appeal No. 76 of 2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6014.pdf

Facts: In a murder occurrence, allegedly five accused participated. Only one was convicted on the basis of statements of eye witness.

Issue: i) Whether the evidence of the prosecution witnesses which has been disbelieved qua the acquitted co-accused can be believed against the convicted accused?
ii) What is evidentiary value of recovery, if no witness from the locality was associated with recovery proceeding?

Analysis: i) It is settled proposition 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.

ii) The recovery of the repeater gun 12-bore 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 from the appellant which was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898.

Conclusion: i) 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.
ii) If at the time of recovery no private witness from the locality was associated with recovery proceedings, same cannot be relied upon.

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32. **Lahore High Court**
Azhar v. The State etc
Criminal Appeal No. 267 of 2017
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC5980.pdf

Facts: Complainant alleged that the accused who was annoyed with the deceased for her marrying with him confronted the complainant party when they were returning from field and made fire shots on the wife of complainant killing her.

Issue: i) What is effect of contradiction in ocular account and medical evidence?
ii) What is significance of motive in criminal case?

Analysis: i) Contradiction in the ocular account of the occurrence, as narrated by eye witnesses and the medical evidence clearly establishes that the prosecution witnesses miserably failed to prove their presence at the place of occurrence at the time of occurrence. Had the witnesses seen the occurrence then there did not exist any possibility that they would have fallen into error, stating wrongly that the appellant fired at the deceased hitting her on her back.
ii) It is settled law that motive is a double-edge weapon, which can cut either way; if it is the reason for the appellant to murder the deceased; it equally is a ground for the complainant to falsely implicate him in this case. It is an admitted rule of appreciation of evidence that motive is only corroborative pieces of evidence and if the ocular account is found to be unreliable then motive has no evidentiary value and loses its significance.

Conclusion: i) Contradiction in the ocular account of the occurrence, as narrated by prosecution witnesses and the medical evidence as furnished by Doctor, clearly establishes that the prosecution witnesses failed to prove their presence at the place of occurrence at the time of occurrence.
ii) Motive is only corroborative piece of evidence and if the ocular account is found to be unreliable then motive has no evidentiary value and lose its significance.

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33. **Lahore High Court**
Muhammad Irshad v. The State and another
Criminal Appeal No. 85 of 2017 etc
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6152.pdf

Facts: The allegations narrated in graphic detail against a number of accused with the individual roles are that they committed murder of two sons of complainant by causing multiple firearm injuries when they were sleeping in their house and emergency light was on in view of suspicion of illicit relation of his one son with the daughter of one accused.

Issue: i) Whether prosecution is bound to establish the fact of availability of light source especially when occurrence had taken place in the dark hours of night?
ii) What is effect of photographic narrations of events by prosecution witnesses?
iii) Whether conviction can be based on abscondence alone?

Analysis: i) The prosecution witnesses failed to establish the fact of such availability of light source and in absence of their ability to do so, we cannot presume the existence of such a light source. The absence of any light source has put the whole prosecution case in dark. It was admitted by the witnesses themselves that it was a dark night and they had used the light of the rechargeable tube-light, never produced, to identify the assailants during the occurrence and as the prosecution witnesses failed to prove the availability of such light source, their statements

with regard to them identifying the assailants cannot be relied upon. The failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence has repercussions, entailing the failure of the prosecution case.

ii) It was humanly impossible to provide such minute details in such a photographic manner or to assign the specific roles and furnish detailed description of the same while getting the written application for the registration of the F.I.R submitted to the Investigating Officer of the case….. The photographic narration of the occurrence by both the witnesses by assigning specific injury to each of the accused in an extreme calamity and crunch situation was highly improbable and not believable, especially when the occurrence had taken place in the dark hours of the night. Over anxious photographic account of the occurrence by the prosecution witnesses vis-a-vis, the weapon of offence, number and locale of injuries allegedly caused by the appellants to the deceased is not only proved to be maneuvered but also improbable and preposterous.

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 substantive piece of evidence. Abscondence itself has no value in the absence of any other evidence. Abscondence per se is not sufficient to prove the guilt but can be taken as a corroborative piece of evidence. In the present case, substantive piece of evidence in the shape of ocular account has been disbelieved, therefore, no conviction can be based on abscondence alone.

Conclusion: i) If prosecution witnesses failed to establish the fact availability of light source it put the whole prosecution case in dark.

ii) Photographic account of the occurrence by the prosecution witnesses was highly improbable and not believable.

iii) No conviction can be based on abscondence alone.

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34. **Lahore High Court**
Murder Reference No. 33 of 2019
The State v. Muhammad Rizwan etc.
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC_6117.pdf

Facts: The two accused (brothers) caused murder of two women allegedly in revenge of registration of criminal case against them by one of them.

Issue: i) What is the effect of non-mentioning the name of witnesses in the inquest reports that were present at the time of its preparation t?

ii) What is the effect of failure on the part of chance witnesses to prove their presence at the place of occurrence, at the time of occurrence?

iii) Whether a single circumstance is sufficient to grant benefit of doubt to accused or there should be so many cirumstances?

Analysis: i) The alleged eye witnesses were not mentioned in column No.4 or page 4 of the inquest report relating to the deceased as being the ones who were present at the time of preparation of the said inquest report by the investigating officer and the alleged eye witnesses were also not mentioned in column No.4 or page 4 of the inquest report relating to the deceased namely Kiran Akbar as being the ones who were present at the time of preparation of the said inquest report by the investigating officer. These witnesses were also not the ones who had identified the dead body of the deceased at the time of the postmortem examinations of the dead bodies of the deceased These omissions strike at the roots of the case of the prosecution and lay bare the untruthful and false claim of the said witnesses to have been present at the place of occurrence, at the time of occurrence.

ii) It is an admitted fact that both the prosecution witnesses did not have their residences or their places of employment near or around the place of occurrence. Both the prosecution witnesses can be termed as "chance witnesses" and hence were under a duty to prove the reason and the circumstances for their presence at the place which they failed to do. In absence of any physical proof or the reason for the presence of the witnesses at the crime scene, the same cannot be relied upon.

iii) Considering all the above circumstances, we entertain serious doubt in our minds regarding the involvement of the appellants in the present case. 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) If the name of witnesses is not mentioned in the inquest reports who were present at the time of the preparation of it, these omissions strike at the roots of the case of the prosecution and lay bare the untruthful and false claim of the said witnesses to have been present at the place of occurrence, at the time of occurrence.

ii) If chance witnesses failed to prove the reason for their presence at the crime scene, at the time of occurrence, the same cannot be relied upon.

iii) 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.

35. **Lahore High Court**
Maqsood Ahmed alias Muneer Ahmed v. The State
Criminal Appeal No. 463-J of 2017
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC 6199pdf

Facts: The appellants were tried by the learned Sessions Judge Bahawalpur in respect of an offence under section 302, 394, 411, 324 and 337-F(iii) PPC for committing the murder of Muhammad Shafique son of Muhammad Rafique (deceased) during robbery. Wherein, they were awarded death.

Issue) i) What is effect of flaws /procedural defects in conducting identification parade?
ii) Whether evidence of injured witness has affirmative proof of his credibility and truth?
iii) What is evidentiary value of recovery?

Analysis: i) The test identification parade proceedings were not conducted as per the law and in violation of the Police Rules, 1934. The perusal of the test identification parade proceedings reveals that the said identification parade of the appellants namely was conducted jointly. It is further recorded in the proceedings of the test identification parade that both the accused were made to sit together in two different rows along with the dummies at different serial numbers. A joint test identification parade of both the appellants was held which has no evidentiary value. It is also settled principle of law that role of the accused was not described by the witnesses at the time of identification parade which is always considered inherent defect; therefore, such identification parade lost its value and cannot be relied upon.
ii) The stamp of injuries on the person of a witness can be a proof of their presence at the place of occurrence, however, it can never be held that they also will tell truth. It has been held that the facts which an injured witness narrates are not to be implicitly accepted rather they are to be attested and appraised on the principles applied for the appreciation of evidence of any prosecution witness regardless of him being injured or not.
iii) We have disbelieved the ocular account in this case; hence the evidence of recovery would have no consequence. 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 flaws in identification parade proceedings affect the prosecution case and such identification test lost its value and not relied upon.
ii) It is settled law that injuries of P.W are only indication of his presence at the spot but are not affirmative proof of his credibility and truth.
iii) 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.

36. **Lahore High Court**
Muhammad Ismail vs. The State etc
Criminal Appeal No. 313 of 2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6053.pdf

Facts: Appellant/convict filed the instant criminal appeal against the judgment wherein the appellant was awarded death penalty whereas the learned trial court sent Murder Reference for confirmation of the sentence of appellant or otherwise.

Issue: i) What will be effect if prosecution failed to prove any source of light at the place of occurrence?
ii) Delay in sending the blood stained churri/ weapon of offence for analysis?
iii) Whether accused can be convicted on the basis of medical evidence alone?

Analysis: i) The absence of any light source has put the whole prosecution case in a gloom cloaking the same with the shroud of obscurity, obscuring all its features. It was admitted by the witnesses themselves that it was a dark night and as the prosecution witnesses failed to prove the availability of any light source, their statements with regard to them identifying the assailant cannot be relied upon. The failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence has repercussions, entailing the failure of the prosecution case.
ii) Another aspect of the case is that the occurrence took place on 06.12.2015, whereas the Churri (P-4) was sent to the office of Punjab Forensic Science Agency, Lahore, on 20.01.2016 and was analyzed on 01.03.2016. During such a long period the blood available on the Churri (P-4), if any, would have disintegrated. It is not possible to believe that the blood had not disintegrated by then and was scientifically impossible to detect the origin of the blood.
iii) The only other piece of evidence left to be considered by us is the medical evidence with regard to the injuries observed on the dead body of the deceased by a Dr. Sajid Ali (PW-11) but the same is of no assistance in this case as medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved incidence. As all the other pieces of evidence relied upon by the prosecution in this case have been disbelieved and discarded by us, therefore, the appellant's conviction cannot be upheld on the basis of medical evidence alone.

Conclusion: i) The failure of the prosecution to prove the presence of any light source at the place of occurrence, at the time of occurrence has repercussions, entailing the failure of the prosecution case.
ii) Delay in sending weapon of offence(churri) to the office of Punjab Forensic Science Agency, fatal for prosecution because it was scientifically impossible to detect the origin of the blood after such a long period because human blood disintegrates in a period of about three weeks.

iii) The medical evidence is only confirmatory or of supporting nature and is never held to be corroboratory evidence, to identify the culprit." As all the other pieces of evidence relied upon by the prosecution in this case have been disbelieved and discarded by us, therefore, the appellant's conviction cannot be upheld on the basis of medical evidence alone.

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37. **Lahore High Court**
Ghulam Muhammad alias Gamoon v. The State
Crl. Appeal No. 716 of 2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6320.pdf

Facts: Appellant/convict filed the instant criminal appeal against the judgment wherein he was awarded death penalty whereas the learned trial court sent Murder Reference for confirmation of the sentence of appellant or otherwise. During pendency of appeal appellant died?

Issue: Whether on the death of the appellant, the appeal shall abate under section 431, Code of Criminal Procedure, 1898 only to the extent of appeal against the sentence of death or also abate to the extent of awarding of the compensation under section 544-A Code of Criminal Procedure, 1898 which the appellant was directed to pay to the legal heirs of the deceased?

Analysis: The section 431, 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, under this Chapter i.e. Chapter XXXI of the Code of Criminal Procedure, 1898, except an appeal from a sentence of fine. Detailed perusal of section 302 of the Pakistan Penal Code, 1860 reveals that it does not include "compensation" as a punishment for the offence of Qatl-e-Amd. Similarly, "compensation" is also not included in the punishments provided under section 53 of the Pakistan Penal Code, 1860. The word "compensation" also does not find mention in the section 431 of the Code of Criminal Procedure, 1898 rather word "fine" has been specifically used therein. The section 544-A, Cr.P.C. was inserted in the Code of Criminal Procedure, 1898 through the Law Reforms Ordinance, 1972, however, no corresponding amendment to the extent of compensation has been brought in section 431 of the Code of Criminal Procedure, 1898. Had there been any intention of the legislature that the appeal on the death of the accused would not abate to the extent of compensation which the appellant had been ordered to pay, then definitely the section 431, Cr.P.C., would have also been amended to this extent, but such is not the position.

Conclusion: Every appeal under section 411-A subsection (2), or section 417 of CrPC shall finally abate on the death of the accused except an appeal against fine.

38. **Lahore High Court**
Muhammad Ismail v. The State and another
Criminal Appeal No. 53 of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC 6284.pdf

Facts: Appellant/convict filed the instant criminal appeal against the judgment wherein the appellant was awarded death penalty whereas the learned trial court sent Murder Reference for confirmation of the sentence of appellant or otherwise.

Issue: Whether prosecution is bound to prove the reason for the presence of chance witnesses at the crime scene?

Analysis: It can be validly held that all the three prosecution witnesses were "chance witnesses" and therefore were under a duty to explain and prove their presence at the place of occurrence, at the time of occurrence. Strangely enough all the three witnesses did not even offer any explanation as to why they found it necessary to go to the house of the deceased at the end of the day when there did not exist any reason for them to do so….In absence of physical proof or the reason for the presence of the witnesses at the crime scene, the same cannot be relied upon.

Conclusion: Prosecution witnesses/chance witnesses were under a duty to explain and prove their presence at the place of occurrence, at the time of occurrence. In absence the reason for the presence of the witnesses at the crime scene, the same cannot be relied upon.

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39. **Lahore High Court**
Kafayat Ullah v. The State etc
Crl. Misc.2143-CB of 2021
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2021LHC6087.pdf

Facts: Through this petition, the petitioner is seeking cancellation of pre-arrest bail granted to respondent No.4 in respect of offences under sections 337-A(v), 337-A(i),337-F(i), 337-L(2) and 34 PPC.

Issue: Whether registration of a cross-version case alone does entitle any accused to be granted the extraordinary relief of pre-arrest bail?

Analysis: The concession of pre-arrest bail cannot be allowed to an accused person unless the court feels satisfied about seriousness of the accused person's assertion regarding his intended arrest being actuated by mala fide on the part of the complainant party or the local Police but not a word about this crucial aspect of the matter is to be found in the impugned order. Mere registration of a cross-version case does not entitle any accused to be granted the extraordinary relief of pre-arrest bail.

Conclusion Mere registration of a cross-version case does not entitle any accused to be granted the extraordinary relief of pre-arrest bail.

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40. **Lahore High Court**
Syed Riaz Husain Shah v. Government of Punjab etc
Writ Petition No. 15433 of 2021
Mr. Justice Sohail Nasir, Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC5807.pdf

Facts: The learned Special Court established under Anti Terrorism Act through a detailed order directed the Chief Secretary Punjab Lahore to constitute Joint Investigation Team (JIT).

Issue: i) Whether the Special Court established under Anti Terrorism Act is empowered to direct Government to constitute JIT?
ii) Whether the Challan in case of proclaimed offenders is filed u/s 512 Cr.P.C?

Analysis: i) The provision of Section 19 of the ATC Act undoubtedly gives no power or authority to the Special Court to constitute a JIT or to issue a direction to the Government in this regard. The words "if the government deems necessary JIT to be constituted by the government" are meaningful which have excluded the Special Court to exercise such powers therefore it is the exclusive domain of the government to or not to constitute JIT.
ii) The role of 512 Cr.P.C is post to submission of report (Challan) and that too when it is before the court of competent jurisdiction because of the words used 'the Court competent to try such person for the offence complained of". As after the words 'offence complained of' the word 'may' has been used, therefore, discretion to proceed under Section 512 Cr.P.C also lies with the court to be performed keeping in view the facts and circumstances of each case and in particular if court finds that there is no immediate prospect of arresting the absconder…. These proceedings are called "trial in absentia" which is not the correct approach., proceedings under Section 512 Cr.P.C are exception to general rule with an aim to preserve the evidence so accused may not take advantage of his illegal act of absconding.… This interpretation is based on the plain reading of Section 512 Cr.P.C where it is provided that the evidence so recorded may be given against accused on trial for the offence with which he is charged, if the deponent (witness) is dead or incapable of giving evidence etc.

Conclusion: i) The Special Court established under Anti Terrorism Act is not empowered to direct Government to constitute JIT.
ii) The Challan in every case is to be filed u/s 173 Cr.Pc. The role of section 512 Cr.P.C is post to submission of challan.

41. **Lahore High Court**
Government of the Punjab & 3 others v. Muhammad Kamran Jamil
Intra Court Appeal No. 179 of 2020
Mr. Justice Sohail Nasir, Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC6399.pdf

Facts: The respondent is one of the persons with disability (blind), who pursuant to an advertisement for the posts of Elementary School Educators (ESE) issued by the Education department/appellants, applied and cleared the test through National Testing Service (NTS). He also passed the interview but could not get the appointment letter with the objection that he had disability to see.

Issue: Whether the refusal of job to a blind person was a justified act on part of Government?

Analysis: The Honourable Supreme Court on the question that if a particular post is not fit for a person with disability, was pleased to say that the establishment may shift the disability quota and adjust it against another post in the establishment so that the overall disability quota is not disturbed and maintained all the times….The respondent not only passed written test but he was also successful in interview therefore, the department should have considered the possibility of providing necessary technical and human support to ensure that respondent was able to perform as an Educator and was not discriminated on the ground of disability

Conclusion: The refusal of job to a blind person is not justified on part of Government. In such case the establishment may shift the disability quota and adjust it against another post in the establishment.

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42. **Lahore High Court**
Sadiq etc v. The State etc
Criminal Appeal No. 161 of 2013
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC5825.pdf

Facts: The appellants have challenged their convictions under section 302/324 PPC whereas, complainant pursuant to PSLA has called in question the acquittal of other accused persons.

Issue: i) Whether the credibility of injured witness cannot be taken to any exception?
ii) Whether the rule of 'sifting the grain from chaff' is applicable in Pakistan?
iii) How the defence plea is to be construed by the Court?

Analysis: i) No doubt that presence of an injured witness at crime scene cannot be disputed or doubted because of injuries on his body but at the same time this recognized principle cannot be skipped that injuries on the person of witness will not show that what he has stated in the court that is the truth and not less than truth and that said injuries do not give him a stamp of truth on his testimony. This principle also

cannot be kept out of sight that his testimony is to be tested and appraised on the principles applied for appreciation of any other prosecution's witness.
ii) The rule of 'sifting the grain from chaff' is no more applicable in Pakistan as held by the Honourable Supreme court of Pakistan, where it has been finally resolved that Rule "falsus in uno, falsus in omnibus" shall henceforth be an integral part of our jurisprudence in criminal cases.
iii) The defence plea could not be construed on the basis of surmises and conjectures unless there had to be clear evidence helping the court to arrive at such decision. Once prosecution's version was disbelieved, there was no authority with the court to make pick and choose of defence plea and then to proceed to record the conviction.

Conclusion: i) The credibility of injured witness can be taken to exceptions.
ii) The rule of 'sifting the grain from chaff' is no more applicable in Pakistan.
iii) The defence plea could not be construed on the basis of surmises and conjectures.

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43. **Lahore High Court**
Muhammad Rizwan etc v. Zarai Taraqiati Bank etc
Execution First Appeal No. 01 of 2018.
Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC5758.pdf

Facts: Zarai Taraqiati Bank/respondent No. 1 instituted a suit for recovery which was decreed. The decree was converted into execution petition. Through the instant Execution First Appeal (EFA), appellants have called in question the validity, legality and propriety of an order passed by the learned Banking Court on the basis of which objection petition submitted by appellants with regard to bank's auction proceedings was dismissed.

Issue: Whether auction proceedings are liable to be set aside in case of non-compliance of procedure given in section 19 of the Financial Institution (Recovery of Finances) Ordinance, 2001?

Analysis: Section 19(3) of the Financial Institution (Recovery of Finances) Ordinance, 2001 empowers the Financial Institution to auction the mortgaged property with or without the intervention of the Banking court either by public auction or by inviting sealed tenders. Section 19(4) of the Ordinance provides a procedure of sealed tenders. Section 15 of the Ordinance was declared unconstitutional by the Full Bench of this Court1 which was subsequently endorsed by the Honorable Supreme Court of Pakistan. In the light of dictum of the apex Court, Section 15 of the Ordinance (ibid) was substituted by Financial Institutions (Recovery of Finances) (Amendment) Act (XXXVIII of 2016). Section 19(5) of the Ordinance by reference has incorporated certain provisions of sub-sections 5 to 12 of Section

15 and made those applicable to the sale of mortgage, pledge, hypothecated properties by the financial institution. In case of any possible conflict and repugnancy i.e. Section 19(3) and Section 15 as adopted by Section 19(5), the latter in sequential will prevail. These are the mandatory requirements. The object and purpose of proclamation is nothing but to have a fair and transparent auction so as to eliminate all chances of any fraud, maneuver at the costs of rights and interest of the judgment-debtor. Law defines that how proclamation is to be drawn up and what measures are to be by taken so as to satisfy the decree without prejudicing rights and interest of the judgment-debtor or any other person, having interest in such property.

Conclusion: Auction proceedings are liable to be set aside in case of non-compliance of procedure given in section 19 of the Financial Institution (Recovery of Finances) Ordinance, 2001.

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44. **Lahore High Court**
Ashiq Muhammad (deceased) through L.Rs v. Abdul Majeed and others
R.S.A.No.35 of 2009.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC5894.pdf

Facts: The predecessor of appellants instituted a suit for possession through preemption which was dismissed. Appeal was allowed by the learned appellate Court. Regular second appeal of the respondents was allowed and case was remanded for impleading respondent No.7. The trial court after recording evidence on new issue decreed the suit. Appeal of the respondents was allowed. Now the appellants/legal heirs of the plaintiff filed instant regular second appeal.

Issue: i) Whether the party is entitled to attack the findings of Courts below without even filing any appeal or cross objection, to establish and show that such findings are illegal, unlawful, and perverse and against the record?
ii) Whether pre-emptor must seek pre-emption of the whole of the subject matter of the sale?

Analysis: i) To do the complete justice a party may be allowed to support the judgment and decree under appeal on a ground which has been found against him. In regular second appeal the same rules are applicable as provided in Order XLI C.P.C. in the light of Order XLII Rule 1 C.P.C. This Court under Order XLI Rule 33 of C.P.C. has empowered to invoke the provisions of law to do complete justice between the parties or prevent the ends of justice from being defeated and adjust the right of the parties in accordance with the natural justice, equity, and good conscious. This Court has manifest power to set right any illegality committed in

law by courts below while deciding specific issue in such context by exercising corrective powers as contained in Order XLI, Rule 33 C.P.C.

ii) The pre-emptor must seek pre-emption of the whole of the subject matter of the sale and pay the entire price paid by the vendees. The rule of partial pre-emption is however subject to an exception that in the following three categories of cases partial pre-emption would be permissible provided the whole sale money is paid:-

a. When the pre-emptor himself claims title to a part of the lands sold to a share out of those lands.
b. When the pre-emptor assail the vendor's title to a part of the lands sold or the extent of his title thereto.
c. When the pre-emptor sets up the title of third persons to a part or share of the land sold…

In the case where one of the vendees is omitted from being impleaded as a defendant in a pre-emption suit to see whether a transaction of sale sought to be pre-empted is divisible or not, two requirements at least have to be met with, first, that there should be specified shares in which the vendees have purchased the land, secondly, that there is a positive proof of the specific and separate contribution made by each of the vendees towards the sale price.

Conclusion: i) The party is entitled to attack the findings of Courts below without even filing any appeal or cross objection, to establish and show that such findings are illegal, unlawful, and perverse and against the record.

ii) The pre-emptor must seek pre-emption of the whole of the subject matter of the sale and pay the entire price paid by the vendees.

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45. **Lahore High Court**
Ghulam Farid, etc. v. Ahmad Khan, etc.
Civil Revision No.213-D of 2004.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC6528.pdf

Facts: Predecessors of petitioners instituted a suit for declaration and perpetual injunction and sought a declaration to the effect that they being legal heirs of his pre-deceased daughter were entitled to get share in his total legacy. Trial Court decreed the suit. Respondents preferred an appeal which was allowed by appellate Court. Through this civil revision, petitioners called in question legality and validity of judgment and decree of appellate Court.

Issue: i) Whether legal heirs of predeceased son/daughter, who died before the promulgation of Muslim Family Laws Ordinance, 1961 are entitled to inherit the estate of their grandfather who died after the promulgation of "Ordinance 1961" in terms of section 4 of the Ordinance, 1961?

ii) Whether limitation precludes a person to get his share from inheritance?

Analysis: i) Undeniably, under the Islamic Sharia, predeceased children are not entitled to any inheritance as only the survivors to a deceased are entitled to inheritance. In the year 1961, the Muslim Family Laws Ordinance, 1961 was promulgated on 15.07.1961 and was commenced after issuance of Notification which was published in PLD 1961 Central Statutes at Page 337, wherein section 4 was introduced, by virtue of which, legal heirs of pre-deceased son or daughter of propositus would be entitled to inheritance on re-opening of the succession. Admittedly, later on section 4 of Ordinance, 1961 was declared un-Islamic by the Federal Shariat Court in a case titled "Allah Rakha etc v. Federation of Pakistan etc (PLD 2000 FSC 1) and had also fixed cut-off date 31.03.2000 i.e., said section shall cease to have effect after the target date. The aforesaid judgment has been challenged by the Government before the august Supreme Court of Pakistan, therefore, said judgment of the Federal Shariat Court suspended automatically till the disposal of appeal in view of Article 203(D),1(A)(2) proviso of the Constitution of Islamic Republic of Pakistan, 1973. Hence, section 4 of the Ordinance, 1961 shall remain in field till the decision of appeal by the Hon'ble Supreme Court of Pakistan, Shariat Appellate Bench. There is no cavil with the proposition that section 4 of the Ordinance, 1961 has no retrospective effect. The words "In the event of death of any son or daughter of propositus before the opening of succession" appearing in Section 4 of the Ordinance, 1961 are very important. Therefore, there is no doubt that it is not the requirement of Section 4 of the Muslim Family Law Ordinance, 1961 that the occurrence of death of the son or daughter of propositus as well as opening of succession should both take place subsequent to the promulgation of the Ordinance, 1961. The only requirement of section is that succession should open after the Ordinance is brought into effect. Section 4 is made applicable when succession of propositus opens and it is an established principle of Muslim Law that the succession of a Muslim opens the moment he dies.

ii) It is settled law that no limitation runs against a wrong entry, mutation is also not a starting point of limitation. In a matter of inheritance, the limitation does not preclude a person to get his share from inheritance.

Conclusion: i) Legal heirs of predeceased son/daughter, who died before the promulgation of Muslim Family Laws Ordinance, 1961 are entitled to inherit the estate of their grandfather who died after the promulgation of "Ordinance 1961" in terms of section 4 of the Ordinance, 1961.

ii) The limitation does not preclude a person to get his share from inheritance.

46. **Lahore High Court**
Muhammad Sharif v. The State and another
Criminal Misc No.39561-B of 2021.
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC6347.pdf

Facts: Through this petition, petitioner, has filed post arrest bail for offences under sections 302, 148, 149, 427, PPC

Issue: Whether deeper appreciation of evidence is permissible while deciding post arrest bail petition?

Analysis: Now it stands settled by the judicial pronouncements that at the stage of bail the evidence or the material brought on record is not to be appreciated in its minute details rather the same is to be taken view of tentatively.

Conclusion: Deeper appreciation of evidence is not allowed at bail stage.

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47. **Lahore High Court**
Khizer Abbas etc. v. The State etc.
Crl. Appeal No.306 of 2018.
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC5732.pdf

Facts: In a case registered under sections 302, 148 & 149 PPC, the trial court convicted an accused/appellant and awarded imprisonment for life, while acquitting the co-accused. Against the punishment, the appellant knocked at the door of Hon'ble Lahore High Court and preferred an appeal on the grounds, *inter alia*; the medical evidence is in conflict with the ocular evidence as signs of throttling are not available in the postmortem examination report of the deceased. On the other hand, the complainant filed revision for enhancement of sentence of the appellant and also filed an appeal against the acquittal of the co-accused.

Issues: i) What symptoms should appear to support a case of throttling?
ii) What alternative modes could cause neck hemorrhage?
iii) What essential detail is required to be produced by the prosecution in a case of unnatural death caused by strangulation?

Analysis: i) Though in some cases of throttling no apparent marks of violence are visible yet in such cases the death should have been caused immediately due to closure of the windpipe but it is not the case in the present matter. As per the facts of the case, the accused was alive on the way hospital but died after 20-25 minutes of the occurrence which shows that it was not a case of death due to immediate loss of breath. The opinions of forensic experts showed that evidence of violent compression of the neck during life is obtained from bruising due to thumb

fingers, nail marks, and swelling and lividity of the face. Besides, further evidence is provided by bruising and laceration of larynx, windpipe, and muscles and vessels in front and sides of the neck and fracture of the cornuae of the laryngeal and occasionally the hyoid. Therefore, in case of throttling, there must be some signs or marks of violence around the neck otherwise, it could be suspected that asphyxia was due to some other reasons like internal disease, so, medical evidence was not found supportive to ocular account. Accordingly, the prosecution failed to bring home the guilt against the appellant, who was acquitted. Besides, the appeal as well as the revision of the complaint failed.

ii) A study showcased that soft tissue hemorrhage of the neck occurs in some known causes of death like multiple traumas or asphyxia death, but it may happen in other causes of death without any direct trauma or neck compression. A study reflected that bruising, hemorrhage and abrasion on the face and neck could occur during CPR, which means Cardiopulmonary Resuscitation, that is an emergency procedure that combines chest compressions often with artificial ventilation in an effort to manually preserve intact brain function until further measures are taken to restore spontaneous blood circulation and breathing in a person who is in cardiac arrest. In the present case, to bring life back of the deceased, there is a probability that the complainant might have resorted to CPR which might have resulted in a little inside injury to the hyoid bone as observed by the histopathologist in his report.

iii) The following detail is essential to be produced by the prosecution in a case where death has been caused as a result of strangulation.

a). Whether deceased was strangled with one or two hands?

b). How long did the accused strangle the deceased?

c). How many time and how many different methods were used to strangle the deceased?

d). Was the deceased thrown against the wall, floor or ground?

e). How much pressure or how hard was the grip?

f). Did the deceased have difficulty breathing? And

g). Did the deceased attempt to protect herself?

Conclusion: i) In case of throttling, there must be some signs or marks of violence around the neck. Moreover, the forensic experts observed that the evidence of violent compression of the neck during life is obtained from bruising due to thumb fingers, nail marks, and swelling and lividity of the face.

ii) A CPR procedure could cause bruises, hemorrhage and abrasion on the face and neck of the deceased. Also, a neck hemorrhage could be caused by internal diseases like ischemic heart disease or cardiac failure.

iii) See above.

48. **Lahore High Court**
Riasat Ali v. The State etc.
Crl. Appeal No.35447 of 2017.
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6561.pdf

Facts: Aggrieved by the judgment of a trial court whereby the accused/appellants were convicted and sentenced to imprisonment for life under sections 302, 148, 149 & 109 PPC, the appellants preferred an appeal before Hon'ble Lahore High Court. Amongst others, the appellant challenged the vires of the judgment on the premise that the medical evidence conflicted with the ocular evidence as the deceased met his fate by falling from an out-of-control bull-cart. The complainant, per contra, filed a revision for enhancement of sentence of the appellant and also filed an appeal against the acquittal of the co-accused.

Issue: Whether the spinal injury leading to the death of the deceased is always homicidal?

Analysis: The spinal injuries are generally accidental, rarely suicidal, and occasionally homicidal. To understand the whole scheme, it is vital to first explain that how injury can be caused. The studies of various forensic experts show that an injury can be caused by a blow from a blunt weapon or by, a fall, crushing, or compression. The studies further reflect that fractures are generally associated with dislocation causing compression, laceration, or crushing of the cord.
Moreover, falling from a height onto the buttocks is also one of the causes of fracture of the vertebral column; this has a matching sense with the injury that caused the death of the deceased wherein contusions were found near the area of right iliac crust and buttocks. So, hitting the deceased on the bull-cart and then falling on to the earth either on to his feet or buttock cannot be ruled out particularly when witnesses deposed about a jump of deceased from a bull-cart to save deceased's life; apparently, no other possibility of causing such injury could gauge from the record. Though instantaneous death due to said injury on the person of deceased was not possible yet a study showed that several bruises, though trivial individually, may cause death from shock, and the doctor has also observed the same in this case.

"……Doctor has cited the weapon of offence as **آلہ دھار تیز و آلہ کندھ** in postmortem report yet nature of injuries described in the postmortem gives somewhat different connotation. Thus, prosecution loses its limb of medical account to catch the offender with criminal liability, as such, the medical evidence is found to be contradicting the ocular account which cannot be relied upon….." Coupled with other factors, such as the inability of the prosecution to prove the presence of witnesses at the place of occurrence, the recoveries being joint, the failure of the Doctor to explain as to how much damage was caused to the spinal cord and how

the injury was caused and under what circumstances, render that the prosecution failed to prove the case beyond any shadow of a doubt. Consequently, the appeal of the appellants was allowed and they were acquitted. Accordingly, the revision, as well as appeal of the complaint stood failed.

Conclusion: The spinal injuries are generally accidental, rarely suicidal, and occasionally homicidal.

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49. **Lahore High Court**
The Bank of Punjab v. Rizwan Akhtar & another
R. F. A. No. 41 of 2020 / BWP
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC6688.pdf

Facts: Instant appeal was instituted under Section 22 of the Ordinance against the impugned Judgment dated 11.12.2019 and Decree dated 13.04.2020 passed by the Banking Court.

Issues: i) Whether an Appeal filed beyond the period of 30 days from the date of Judgment is barred by limitation, notwithstanding that an Appeal against Decree is filed within 30 days from the date of Decree under Section 22(1) of the Ordinance?
ii) Whether the Limitation Act is applicable to the provisions of the Ordinance in general and Section 22(1) of the Ordinance in particular to condone delay?

Analysis: i) It is apparent from the scheme of law encapsulated in the Ordinance that the terms "Judgment" and "Decree" are used at times separately and at times jointly. It is in this context that Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 with respect to Appeal provides that any person aggrieved by any "Judgment" or "Decree" or "Sentence" or "Final Order" passed by the Banking Court may file an Appeal within 30 days from the date of passing of such "Judgment" or "Decree" or "Sentence" or "Final Order". The only logical conclusion derived from scheme of law as a whole is that conferment of concurrent right to Appeal against the "Judgment" or "Decree" necessarily implies that an aggrieved party does not have to wait for the drawing of a "Decree" upon pronouncement of a "Judgment" and must file an Appeal within the stipulated period from the date of passing of "Judgment" under Section 22(1) of the Ordinance. The period of limitation if allowed to be computed from the subsequent date of the Decree, as in the present case, would necessarily make the preceding period of limitation regarding the Judgment redundant leading to absurd results. It is universally accepted principle of interpretation of statutes that no provision of a statute or a specific meaningful word in a provision of the statute should be interpreted in a manner to render the same as meaningless or redundant. It is equally important that a provision of a special statute should be interpreted with reference to the special scheme of the law and the objective it endeavors to achieve… Under the provisions of the CPC an Appeal against an

original Decree cannot be instituted without a Decree.… From the comparative analysis of Section 22(1) of the Ordinance as well as relevant provisions of the CPC and case law discussed above, it can thus be safely concluded that the right of Appeal is always exercised in accordance with the provisions of the applicable statute since the right to Appeal, as such is not an inherent right but the creature of the statute. The right to Appeal shall, therefore, be always interpreted in the light of the text of the statute under which it is granted. Thus, under the provisions of Section 22(1) of the Ordinance, the remedy of Appeal is concurrently available against a Decree or a Judgment. Hence, our answer to query is that under Section 22(1) of the Ordinance, an Appeal not filed within 30 days from the date of Judgment becomes barred by limitation even though an Appeal against Decree following such Judgment is within time

ii) The Section 24 of the Ordinance clearly stipulates that the provisions of the Limitation Act are applicable to all cases instituted after the coming into force of this Ordinance except as otherwise provided in the Ordinance. Section 22(1) of the Ordinance clearly provides a limitation of 30 days with respect to filing of an Appeal. It is settled law that if a specific provision of law provides a specific period of limitation, the cause or action contemplated therein must be initiated within the prescribed period. Therefore, an Appeal filed beyond the period of limitation of thirty days under Section 22(1) of the Act shall be barred by time. Further, an application for condonation of delay under Section 5 of the Limitation Act would be excluded or prohibited in view of Section 29(2) of the Limitation Act. Hence, applications under Section 5 of the Limitation Act accompanying the titled Appeals were not competent.

Conclusion: i) An Appeal filed beyond the period of 30 days from the date of Judgment is barred by limitation, notwithstanding that an Appeal against Decree is filed within 30 days from the date of Decree under Section 22(1) of the Ordinance.
ii) The Limitation Act is not applicable to the provisions of the Ordinance in general and Section 22(1) of the Ordinance in particular to condone delay.

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50. **Lahore High Court**
Imtiaz Ahmad v. The State & another
Criminal Appeal No.191 of 2016
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC6702.pdf

Facts: The appellants have challenged their convictions under section 302/324/337F PPC whereas, complainant pursuant to PSLA has called in question the acquittal of other accused persons.

Issue: i) What is effect of nomination of accused through supplementary statement who were previously well known to the complainant?
ii) What is nature of motive?
iii) What is meaning of proof beyond reasonable doubt?

Analysis: i) In the crime report complainant mentioned the features of unknown assailants in detail therefore, supplementary statement got recorded by the complainant, seems to be result of deliberation and consultation, especially when it is an admitted fact that all the accused persons nominated through supplementary statement were previously very well known to complainant and other prosecution witnesses. This fact alone creates a serious dent in the prosecution story and nomination of accused subsequently through supplementary statement seems result of after-thought and concoction. Where crime report is registered against the unknown accused person and subsequently, those accused are nominated through supplementary statement, who are already well-known to complainant and prosecution witnesses, it can be considered a dishonest improvement and consequently not worthy of any credence.

ii) Even otherwise, motive is always considered as double edge weapon, at one hand if it gives a reason or motivation to the accused to commit the crime, on the other hand, it equally provides impetus to the complainant to falsely implicate the accused in the case.…. Motive alone, as a corroborative circumstance to support the ocular evidence cannot be relied upon to convict an accused when the ocular testimony is neither credible nor worthy of reliance. It is an established proposition of law that motive is not substantive piece of evidence rather same is merely a circumstance, which might lead the accused to commit the occurrence.

iii) Proof beyond reasonable doubt means that prosecution should produce such evidence that no prudent mind would doubt about the guilt of the accused. A reasonable doubt may be described as a doubt that would make a prudent mind hesitant to act. Proof beyond a reasonable doubt, therefore, must be a proof of such a convincing character that a reasonable person would not be reluctant to rely and act upon it to convict an accused. However, it is to be understood that proof beyond a reasonable doubt does not mean proof beyond all possible doubts.

Conclusion: i) The nomination of accused through supplementary statement and in private complaint jolted the entire edifice of prosecution case when they were previously known to the complainant.

ii) The motive is not substantive piece of evidence rather same is merely a circumstance.

iii) The expression "beyond reasonable doubt" means proof of a convincing character but does not mean proof beyond all possible doubts.

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51. **Lahore High Court**
Muhammad Akram v. Muhammad Asif
R.F.A No. 14 of 2021
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC5858.pdf

Facts: Present Regular First Appeal has been filed against Judgment and Decree passed by learned Additional District Judge in Civil Suit filed under Order XXXVII of

the Code of Civil Procedure, 1908, whereby counter claim of Rs.3,700,000/- has been decreed against the Appellant.

Issue: i) Whether a counter claim of defendant can be treated as a plaint?
ii) What is the effect of not calling upon the plaintiff or putting the notice to file written statement or replication or rejoinder, to the claim of the defendant?
iii) If the set-off claim can survive upon break down of the main claim?
iv) When secondary evidence can be tendered?

Analysis: i) The Hon'ble Court while relying on (PLD 1983 Supreme Court 5) (1993 SCMR 441) (2009 SCMR 666) held that although a counter claim which is neither a legal set-off nor an equitable set-off, however, there is nothing in the statutory law or otherwise, precluding a Court from treating a counter claim as a plaint, provided it contains all the necessary requisites sufficient to be treated as a plaint.

ii) The case was never fixed for filing of written statement or rejoinder to the counter claim, as required under Order VIII Rule 10 of the Code of Civil Procedure, 1908. Without calling upon the Appellant or putting the notice to file written statement or replication or rejoinder, to the claim of the Respondent-Defendant, not just a negative inference is drawn by the learned trial Court but reading of paragraph No.20 of the impugned judgment, reveals that this failure to file the rejoinder or written statement has been taken as admission to the claim of respondent-defendant, which clearly caused prejudice to the case of the Appellant.

iii) Next point that came up for consideration is the survival of the claim in set-off, when the claim in the suit of the petitioner / plaintiff was dismissed. In my assessment, the claim of set-off survives even if the claim of the Plaintiff breaks down for any reason.

iv) Secondary evidence can only be tendered, if the document is in the possession of person against whom it is required to be proved or the person is out of reach or he is not subject to process of the Court or any person who is legally bound to produce it; and such person has not produced the same despite notice. The condition to produce the secondary evidence is the notice to the party in whose possession or power the document is, unless the case falls in the proviso of Article 77 of Qanun-e-Shahadat Order, 1984.

Conclusion: i) There is nothing in the statutory law or otherwise, precluding a Court from treating a counter claim as a plaint, provided it contains all the necessary requisites sufficient to be treated as a plaint.

ii) Not calling upon the plaintiff or putting the notice to file written statement or replication or rejoinder, to the claim of the defendant caused prejudice to the case of the plaintiff.

iii) The claim of set-off survives even if the claim of the plaintiff breaks down for any reason.

iv) The eventualities when secondary evidence can be tendered are discussed in para (iv) of analysis.

52. **Lahore High Court**
Muhammad Siddique v. Secretary Education, etc
W.P. No.15834 of 2014
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC5915.pdf

Facts: The husband of a deceased civil servant applied for being appointed under Rule 17-A of the Punjab Civil Servants (Appointment & Condition) of Service Rules, 1974 but he was refused on the pretext that the said Rule only allowed for appointing a widow of a deceased civil servant who dies while ins service and not a widower of a deceased female civil servant.

Issue: Whether the Rule 17-A of the Punjab Civil Servants (Appointment & Condition) of Service Rules is discriminatory in so far as it denies employment to a widower of deceased female civil servant?

Analysis: The underlying presumption is that a spouse of a female civil servant cannot be dependent on her (so as to be able to avail the benefit of Rule 17-A) since she is a female, and the spouse is a male. Such an interpretation is inherently discriminatory against females as a whole, and the deceased female civil servant in the instant matter….. Denial of a job under Rule-17-A is not a measure conforming with Article 25(3) but is rather outright discrimination (i) against female civil servants whose job does not carry the same perks and advantages and hence, points towards less recognition of their service to the state compared to their male counterparts i.e. terms and conditions of service of both genders are different (ii) against surviving husbands who despite being in similar position (surviving spouse of a civil servant) are treated differently than widows…. As a rule of interpretation, the words "wife/widow" used in Rule 17-A of the Rules of 1974 will necessarily include the male counterparts.

Conclusion: The Rule 17-A in its present form in so far as it denies employment to a widower is declared to be discriminatory and offensive to Articles 4, 25 and 27 of the Constitution and the respondents are directed to bring about suitable amendments in Rule 17-A so as to bring it in line with the constitutional mandate. In the meanwhile, respondents are directed to consider the case of the petitioner for compassionate employment in terms of Rule 17-A of the Punjab Civil Servants (Appointment & Condition) of Service Rules, 1974.

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53. **Lahore High Court**
Merck Sharp & Dhome Corp v. Hilton Pharma (Private) Limited and another
Civil Revision No. 589 of 2013
Mr. Justice Muhammad Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC6620.pdf

Facts: The instant revision petitions challenge separate orders passed by the learned

Additional District Judge in two identical suits instituted by the petitioner for the grant of perpetual injunction whereby the petitioner has been directed to deposit a sum of Rs. 15,000,000/- in cash or furnish bank guarantee equivalent to the same amount as a security for costs under rule 1 of Order XXV of the Code of Civil Procedure (V of 1908).

Issue: Whether the respondents were entitled to the security for costs under the provisions of rule 1 of Order XXV of the Code?

Analysis: The cases in hand do not relate to sub rule (2) & (3) but sub rule (1) of Rule 1 of Order XXV of the Code. On plain reading of rule 1 of Order XXV of the Code, it is manifest that an order of security for costs can only be made against plaintiff(s) and in favour of defendant(s). It applies in cases where plaintiff(s) are residing out of Pakistan and is subject to the condition that such a plaintiff or none of the plaintiffs possesses any sufficient immovable property within Pakistan other than the suit property. The court may make an order for security of costs at any stage of the suit. Such order may be made either on an application of the defendant or of its own motion by the court and the same may cover all costs incurred and likely to be incurred by any defendant but not the amount of any claim or decree. No amount is to be paid to the defendant and all that Order XXV of the Code does at this stage is to secure the costs incurred and likely to be incurred by a defendant in defending a claim filed by a foreign plaintiff who does not possess any sufficient immovable property within Pakistan. Sub rule (1) of Rule (1) of Order XXV of the Code applies to all kinds of suits and not just a suit for the payment of money, which restriction has been imposed by the legislature under sub rule (3) in relation to the suits where the plaintiff is a woman.

Conclusion: The petitioner in these cases is a company incorporated under the laws of State of New Jersy, United States of America, possessing no immovable property within Pakistan other than the property claimed to be subject matter of the suit. The learned trial court legitimately invoked the provision of rule 1 of Order XXV of the Code to direct the petitioner to give security for payment of all costs likely to be incurred by respondent No.1/defendant.

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54. **Lahore High Court**
Sheikh Haroon-ur-Rehman v. Muhammad Rafique and others
Writ Petition No.3433 of 2021
Mr. Justice Muhammad Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC6714.pdf

Facts: Learned Civil Judge without framing of issues and recording of evidence rejected application under Section 12(2) of the Code of Civil Procedure summarily.

Issue: Whether it is necessary to frame issues and record evidence for the disposal of an application under Section 12(2) of the Code?

Analysis: Prior to insertion of sub-section (3) in Section 12 of the Code through Punjab Act

No. XIV of 2018 dated 20.03.2018, no procedure was prescribed for the disposal of an application under Section 12(2) of the Code, however, in cases where the determination of allegations of fraud and misrepresentation involved investigation into the question of fact, inquiry was ordinarily held to adjudicate upon the matter by framing an issue and recording evidence while invoking the provision of Section 141 of the Code. It was, however, held in various judgments of the apex Court to be not mandatory to frame issues and record evidence for the disposal of an application under Section 12(2) of the Code as the court had to regulate its proceedings keeping in view nature of the allegations made in the application and adopt such mode as was in consonance with justice in the facts and circumstances of the case. It was further held that framing of issues in every case to examine merits of such application would frustrate the object of Section 12(2) of the Code which is to avoid protracted and time consuming litigation and to save the genuine decree holders from grave hardships, ordeal of further litigation, extra burden on their exchequer and simultaneously to reduce unnecessary burden on the courts.

Conclusion: The requirements of a regular trial vis-à-vis framing of issues and recording of evidence have been generally dispensed with by the legislature in adjudication of applications under Section 12(2) of the Code.

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55. **Supreme Court of the United States**
Timbs v. Indiana, 586 U.S. ___ (2019)
https://www.supremecourt.gov/opinions/18pdf/17-1091_5536.pdf
https://ballotpedia.org

Facts: It was a case in which the Court dealt with the applicability of the excessive fines clause of the Constitution's Eighth Amendment to state and local governments in the context of asset forfeiture. When Tyson Timbs pleaded guilty to a drug charge, he was ordered as part of his sentence to forfeit his Land Rover, on the grounds that he had transported drugs in the vehicle. A state appeals court ruled in favor of Timbs, who argued that the forfeiture was unconstitutional under the Eighth Amendment's clause prohibiting excessive fines. The Indiana Supreme Court reversed the decision, stating that the U.S. Supreme Court had never ruled that the excessive fines clause applied to state governments.

Issue: Whether the Eighth Amendment's Excessive Fines Clause is incorporated against the States under the Fourteenth Amendment?

Analysis: The court vacated and remanded the opinion of the Indiana Supreme Court, holding that "the Eighth Amendment's Excessive Fines Clause is an incorporated protection applicable to the States under the Fourteenth Amendment's Due Process Clause." The case clarified that the Eighth Amendment's clause prohibiting excessive fines applies to state governments. Justice Ruth Bader Ginsburg delivered the unanimous opinion of the court. The court vacated and

remanded the opinion of the Indiana Supreme Court, holding that "the Eighth Amendment's Excessive Fines Clause is an incorporated protection applicable to the States under the Fourteenth Amendment's Due Process Clause." In her opinion for the court, Justice Ginsburg wrote, *[t]he Fourteenth Amendment's Due Process Clause incorporates and renders applicable to the States Bill of Rights protections 'fundamental to our scheme of ordered liberty,' or 'deeply rooted in this Nation's history and tradition.' McDonald v. Chicago, 561 U. S. 742, 767 (alterations omitted). If a Bill of Rights protection is incorporated, there is no daylight between the federal and state conduct it prohibits or requires*. Justice Neil Gorsuch, who joined the court's opinion, wrote, *"There can be no serious doubt that the Fourteenth Amendment requires the States to respect the freedom from excessive fines enshrined in the Eighth Amendment*

Conclusion: The Court unanimously ruled that the Eighth Amendment's prohibition of excessive fines is an incorporated protection applicable to the states under the Fourteenth Amendment.

LATEST LEGISLATIONS/AMENDMENTS

1. Vide notification No. F. 2(1)/2021.Pub dated 01-11-2021, the **National Accountability (Third Amendment) Ordinance, 2021** has been promulgated, to amend the National Accountability Ordinance, 1999. Through this Ordinance section 4, section 5, section 6, section 9, section 16, section 32 of the Ordinance, 1999 have been amended.
   http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Npap1j-sg-jjjjjjjjjjjj

2. **THE PUNJAB COMMISSION ON IRREGULAR HOUSING SCHEMES (SECOND AMENDMENT) ORDINANCE 2021 (XXVI OF 2021)** has been promulgated by the Governor of the Punjab on 09 November 2021 to amend the Punjab Commission on Irregular Housing Schemes Act 2021, for better functioning of the Commission and for the ancillary matters. Through this Ordinance long title, preamble, section 2, section 4, section 5 and section 9 of Act XXXIII of 2021 have been amended and a section 5-A has been inserted in Act XXXIII of 2021.
   https://punjabcode.punjab.gov.pk/en/show_article/ADBcalBgBzJQNw--

LIST OF ARTICLES:-

1. **MANUPATRA**
   file:///C:/Users/LHC/Desktop/F5559251-3023-40F7-8B34-61E77BE6F559.pdf
   AIR CARRIER LIABILITY FOR PASSENGER DEATH OR INJURY UNDER CARRIAGE BY AIR ACT 1972 by Dr. Sandeepa Bhat B

   Carriers' liability for passenger death or injury during the transportation by air has become a major area of controversy in India especially post Mangalore air crash. The Carriage by Air Act 1972 dealing with carriers' liability in India incorporates Warsaw Convention, Hague Protocol and Montreal Convention, the

three international instruments ratified by India. The differences in scheme of liability adopted in these instruments have brought forward significant questions in terms of jurisdiction and computation of compensation. In addition, the application of international carriers' liability regime to domestic carriers with modifications has triggered the questions about justifiability of discrimination. In light of these factors, it is pertinent to address the issues concerning liability for passenger death or injury during the air transportation not only from an academic perspective but also from practical point of views……

2. **LUMS LAW JOURNAL**
https://sahsol.lums.edu.pk/sites/default/files/hindu_marriage.pdf
THE HINDU MARRIAGE ACT 2017: A REVIEW by Sara Raza

Ever since Pakistan gained independence in 1947, the Hindu community has been subject to severe discrimination and marginalization. Hindu women, especially, have had to face the brunt of this unjust treatment and are regularly subjected to forced conversions, rape, and oppression within the domestic sphere.1 According to a report released by the Movement of Solidarity and Peace in Pakistan, up to 300 Hindu women are forced to convert and marry Muslim men every year in Pakistan.2 In this context, Hindu Personal Law and, specifically, law regulating marriages had been largely ignored as a legislative matter by the Parliament until two years ago, reflecting the Pakistani state's extended failure to provide legal protection to the basic social institution of family for its Hindu citizens. The Hindu Marriage Act 2017 marked a breakthrough as the first legislation dealing with personal law of Pakistani Hindus. This review will discuss ancient Hindu beliefs about marriage, problems that were caused by the lack of legislation in this respect, the Sindh Hindu Marriage Registration Act 2016, the Hindu Marriage Act 2017, its purpose, and analyze its provisions.

3. **YALE LAW REVIEW**
https://www.yalelawjournal.org/pdf/1084_uyk4si82.pdf
RECOGNIZING CHARACTER: A NEW PERSPECTIVE ON CHARACTER EVIDENCE by Barrett J. Anderson

Courts have historically regulated the use of character in trials because of its potential to prejudice juries. In order to regulate this type of proof, courts must be able to recognize what is and is not character evidence, but past attempts to define character in the law of evidence have been unsatisfactory. This Note proposes a new framework to help courts unravel this age-old mystery. By considering legal scholarship in conjunction with psychological research and employing common tools of statutory interpretation, this Note contends that proof must have two components for it to be regulated by the character scheme in the Federal Rules of Evidence: propensity and morality. It then explains the elements of each component under the Federal Rules regime, examines several evidentiary examples drawn from real cases to illustrate how courts would apply the

proposed framework, and concludes by discussing the broader implications of this new perspective on character evidence.

4. **MODERN LAW REVIEW**
https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1468-2230.2011.00866.x
'DELEGATED' LEGISLATION IN THE (NEW) EUROPEAN UNION: A CONSTITUTIONAL ANALYSIS by Robert Schˇtze

This article brings classic constitutionalism to an analysis of delegated legislation in the European Union. To facilitate such a constitutional analysis, it starts with a comparative excursion introducing the judicial and political safeguards on executive legislation in American constitutionalism. In the European legal order, similar constitutional safeguards emerged in the last fifty years. First, the Court of Justice developed judicial safeguards in the form of a European non-delegation doctrine. Second, the European legislator has also insisted on political safeguards within delegated legislation. Under the Rome Treaty, 'comitology' was the defining characteristic of executive legislation. The Lisbon Treaty represents a revolutionary restructuring of the regulatory process. The (old) Community regime for delegated legislation is split into two halves. Article 290 of the Treaty on the Functioning of the European Union (TFEU) henceforth governs delegations of legislative power, while Article 291 TFEU establishes the constitutional regime for delegations of executive power.