

## **Pakistan Penal Code**

THE  
PAKISTAN PENAL  
CODE  
(ACT NO. XLV OF 1860)  
[6th October, 1860]

### CHAPTER I INTRODUCTION

Preamble. Whereas it is expedient to provide a general Penal Code for Pakistan: It is enacted as follows:—

1. Title and extent of operation of the Code. This Act shall be called the Pakistan Penal Code, and shall take effect throughout Pakistan.

2. Punishment of offences committed within Pakistan. Every Person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within Pakistan.

3. Punishment of offences committed beyond, but which by law may be tried within Pakistan. Any person liable, by any Pakistan Law, to be tried for an offence committed beyond Pakistan shall be dealt with according to the provision of this Code for any act committed beyond Pakistan in the same manner as if such act had been committed within Pakistan.

4. Extension of Code to extra-territorial offences. The provisions of this Code apply also to any offence committed by:—

2[(1) any citizen of Pakistan or any person in the service of Pakistan in any place without and beyond Pakistan;]

(2) [Omitted by A.O., 1961]

(3) [Omitted by Ordinance XXVII of 1981]

(4) any person on any ship or aircraft registered in Pakistan wherever it may be.

Explanation.— In this section the word “offence” includes every act committed outside Pakistan which, if committed in Pakistan, would be punishable under this Code.

Illustrations

(a) A, a Pakistan subject, commits a murder in Uganda. He can be tried and convicted or murder in any place in Pakistan in which he may be found.

(b) [Omitted by Ord. XXVII of 1981.]

3[(c) C, a foreigner who is in the service of Pakistan commits a murder in London. He can be tried and convicted of murder at any place in Pakistan in which he may be found.]

(d) D, a British subject living in Junagadh, instigates E to commit a murder in Lahore. D a guilty of abetting murder.

3[5. Certain laws not to be affected by this Act. Nothing in this Act is intended to repeal, vary, suspend or affect any of the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the State or of any special or local law.]

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## CHAPTER II GENERAL EXPLANATIONS

6. Definitions in the Code to be understood subject to exceptions. Throughout this Code every definition of an offence, every penal provision and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter entitled "General Exception," though those exceptions are not repeated in such definition, penal provision or illustration.

### Illustrations

(a) The Sections in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences: but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(b) A, police officer, without warrant, apprehends Z who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and, therefore, the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it."

7. Sense of expression once explained. Every expression which is explained in any part of this Code is used in every part of this Code in conformity with the explanation.

8. Gender. The pronoun "he" and its derivatives are used of any person, whether male or female.

9. Number. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

10. "Man", "Woman". The word "man" denotes a male human being of any age; the word "woman" denotes a female human being of any age.

11. "Person". The word "person" includes any Company or Association, or body of persons, whether incorporated or not.

12. "Public". The word "public" includes any class of the public or any community.

13. Definition of "Queen". [Omitted by A.O., 1961, Art. 2 and Sched. (w.e.f. the 23rd March, 1956).]

14. "Servant of the State". The words "servant of the State" denote all officers or servants continued, appointed or employed in Pakistan, by or under the authority of the Federal Government or any Provincial Government.

15. [Definition of British-India] Rep. by A.O., 1937.

16. [Definition of "Government of India] Rep. by A.O., 1937.

17. "Government". The word "Government" denotes the person or persons authorized by law to administer executive Government in Pakistan, or in any part thereof.

18. [Definition of Presidency] Rep. by A.O., 1937.

19. "Judge". The word "Judge" does not only denote every person, who is officially designated as a Judge, but also every person—

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or

who is one of a body of persons, which body of person is empowered by law to give such a judgment.

#### Illustrations

(a) [Omitted by Act XXVII of 1981]

(b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment with or without appeal, is a Judge.

(c) [Omitted by Act XXVI of 1951]

(d) [Omitted by Ordinance XXVII of 1981]

20. "Court of Justice". The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

21. "Public servant". The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:—

First: [Omitted by Ordinance XXVII of 1981]

Second: Every Commissioned Officer in the Military, Naval or Air Force of Pakistan while serving under the Central Government or any Provincial Government:

Third: Every Judge;

Fourth: Every officer of a court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court; and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth: Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth: Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh: Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth: Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth: Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government, and every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty;

Tenth: Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh: Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election.

Illustration

A Municipal Commissioner is a public servant.

Explanation 1: Person falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2: Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Explanation 3: The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.

#### COMMENTARY

Absence in an enactment of section defining public servant does not mean that persons concerned who are covered by enactment are not to be treated at all as public servants. What it means is that S. 21 would come into play, which would determine which of such persons can be treated as falling in category of "public servants" as defined by S. 21.1

22. "Movable Property". The words "movable property" are intended to include corporeal property of every description, except land and thing attached to the earth or permanently fastened to anything which is attached to the earth.

23. Wrongful gain. "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss". "Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

"Gaining wrongfully", Losing wrongfully. A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

24. "Dishonestly". Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

25. "Fraudulently". A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

26. "Reason to believe". A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing but not otherwise.

27. Property in possession of wife, clerk or servant. When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation: A person employed temporarily on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

#### COMMENTARY

Government property. Government property, in possession of a Government servant, should be deemed to be in possession of Government. If a criminal, by cheating the Government servant, induces either him or another Government servant to deliver him Government property, the act of criminal is covered by Sec. 415, even though the officer actually deceived may not be the person who in consequence of fraud is persuaded to deliver any property to delinquent. 1

28. "Counterfeit". A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practice deception, or knowing it to be likely that deception will thereby be practiced.

Explanation 1: It is not essential to counterfeiting that the imitation should be exact.

Explanation 2: When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practice deception or knew it to be likely that deception would thereby be practiced.

29. "Document". The word "document" denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation: It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of justice, or not.

Illustrations

A writing expressing the terms of a contract, which may be used as evidence of the contract.

A cheque upon a banker is a document.

A Power-of-Attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document.

Explanation 2: Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration

A writes his name on the tract of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

30. "Valuable security". The words "valuable security" denote a document which is, or purports, to be a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

#### Illustration

A writes his name on the back of a bill of exchange. As the effect to this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security".

31. "A will". The words "a will" denote any testamentary document.

32. Words referring to acts include illegal omissions. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omission.

33. "Act"; "Omission". The word "act" denotes as well as series of acts as a single act; the word "omission" denotes as well as series of omissions as a single omission.

34. Acts done by several persons in furtherance of common intention. When a criminal act is done by several persons, in furtherance of the common intention of all, each of such person is liable for that act in the same manner as if it were done by him alone.

[Note: Provisions of sections 34 to 38 of Chapter II apply also to offences under Prohibition (Enforcement of Hadd) Order (P.O. 4 of 1979), Offences

Against Property (Enforcement of Hudood) Ordinance (VI of 1979), Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979) and Offence of Qazf (Enforcement of Hadd) Ordinance (VIII of 1979)].

#### COMMENTARY

Doubt about application of Sections 34, 107, 159. Makes it always necessary not to apply either of these provisions which seek conviction on vicarious liability only. 1

Vicarious liability on basis of common intention. If an intention (to kill) in common with others or otherwise can develop during occurrence reverse (not to kill) can also legitimately be assumed. Those who might have held an intention common with others before a crucial act (of killing) might change mind/intention and stop at something lesser than what otherwise intend doing.2

Vicarious liability. Appellant and his father arming themselves with weapons and causing injuries to deceased. Held: Appellant and his father has shared common intention to kill deceased and in such case question as to who caused fatal blow would be of no consequence.

Mere presence at time of occurrence. Not sufficient to bring into play doctrine of constructive of vicarious liability.<sup>3a</sup>

Offenders who arm themselves with deadly weapons and pre-planned an attack on their opponents should realize and know that such an attack on their opponents can result in murder and injuries to rivals. Courts in such circumstances would be justified to draw an inference that offence so committed was in furtherance of common intention of each one irrespective of role played by each of them.<sup>4</sup>

Application of S. 34 to make all associates liable for murder would present no difficulty when all associates were actuated by a common intention against victims.<sup>5</sup>

Common intention. If a criminal act was committed in furtherance of common intention or object by several persons, each person would be liable for that act as if it was committed by him.<sup>5a</sup>

Common intention is sole test of joint liability u/s 34. S. 34 would not normally apply when incident takes place all of a sudden at spur of moment without any premeditation. In such case, every person who took part in incident would be responsible for his individual act. Held: Conviction/sentence u/s. 307/34 was not sustainable and it merited setting aside.<sup>6</sup>

35. when such an act is criminal by reason of its being done with a criminal knowledge or intention. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

36. Effect caused partly by act and partly by omission. Whenever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

#### Illustration

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

37. Co-operation by doing one of several acts constituting an offence. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts either singly or jointly with any other person, commits that offence.

#### Illustrations

(a) A and B agree to murder Z by severally and at different times giving him small dose of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B



intentionally co-operate in the commission of murder and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(b) A and B are joint jailors, and as such have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for the purpose Z dies of hunger. Both A and B are guilty of the murder of Z.

(c) A, a jailor, has the charge of Z a prisoner. A intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death, Z dies of hunger, B is guilty of murder, but, as A did not co-operate with B, A is guilty only of an attempt to commit murder.

38. Persons concerned in criminal act may be guilty of different offences. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

#### Illustration

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death. B is guilty of murder, and A is guilty only of culpable homicide.

39. "Voluntarily". A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

#### Illustration

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating robbery and thus causes the death of a person. Here, A may not have intended to cause death, and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

40. "Offence". Except in the Chapters and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, Chapter V-A and in the following sections, namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216 and 441 the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

41. "Special law". A "Special law" is a law applicable to a particular subject.

42. "Local Law". A "local law" is a law applicable only to a particular part of the territories comprised in Pakistan.

43. "Illegal". "Legally bound to do". The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

#### COMMENTARY

Where a Medical Officer charged fees in excess of those fixed under the rules, he was not doing something illegal. 6a

44. "Injury". The "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

45. "Life". The word "life" denotes the life of a human being, unless the contrary appears from the context.

46. "Death". The word "death" denotes the death of a human being unless the contrary appears from the context.

47. "Animal". The word "animal" denotes any living creature, other than a human being.

48. "Vessel". The word "vessel" denotes anything made for the conveyance by water of human beings or of property.

49. "Year"; "Month". Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

50. "Section". The word "section" denotes one of those portions of a Chapter of this Code which are distinguished by prefixed numeral figures.

51. "Oath". The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

52. "Good faith". Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

52A. "Harbour". Except in section 157, and in section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.

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CHAPTER III  
OF PUNISHMENTS

7[53. Punishments. --- The punishments to which offenders are liable under the provisions of this Code are, ---

Firstly, Qisas;

Secondly, Diyat

Thirdly, Arsh;

Fourthly, Daman;

Fifthly, Ta'zir

Sixthly, Death;

Seventhly, Imprisonment for life;

Eighthly, Imprisonment which is of two descriptions, namely:--

(i) Rigorous i.e., with hard labour;

(ii) Simple;

Ninthly, Forfeiture of property;

Tenthly, Fine.]

54. Commutation of sentence of death. In every case in which sentence of death shall have been passed, the Central Government or the Provincial Government of the province within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code. 8[ : ]

9[Provided that, in a case in which sentence of death shall have been passed against an offender convicted for an offence of qatl, such sentence shall not be commuted without the consent of the heirs of the victim.]

55. Commutation of sentence of imprisonment for life. In every case in which sentence of imprisonment for life shall have been passed, the Provincial Government of the Province within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years 8[ ; ]

10[Provided that, in a case in which sentence of imprisonment for life shall have been passed against an offender convicted for an offence punishable under Chapter XVI, such punishment shall not be commuted without the consent of the victim or, as the case may be, of his heirs.]

55A. Saving for President's prerogative. Nothing in section fifty-four or section fifty-five shall derogate from the right of the President to grant pardons, reprieves, respites or remissions of punishment 8[ : ]

9[\"Provided that such right shall not, without the consent of the victim or, as the case may be, of the heirs of the victim, be exercised for any sentence awarded under Chapter XVI.]

56. Sentence of Europeans and Americans to penal servitude. [Rep. by the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (II of 1950), Schedule.]

57. Fractions of terms of punishment. In calculating fractions of terms of punishment, 10[imprisonment] for life shall be reckoned as equivalent to imprisonment for 10[twenty five] years.

#### COMMENTARY

Object of S. 57, P.P.C. was to lay a basis for the remission system for the purpose of working out the remission. 10a

58. Offenders sentenced to transportation how dealt with until transported. [Omitted by the Law Reforms Ordinance, 1972].

59. Transportation instead of imprisonment. [Omitted by the Law Reforms Ordinance, 1972].

60. Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

61. Sentence of forfeiture of property. [Repealed by the Indian Penal Code (Amendment) Act, 1921 (XVI of 1921), S.4.]

62. Forfeiture of property, in respect of offenders punishable with death, transportation or imprisonment. [Rep. by the Indian Penal Code (Amendment) Act, 1921 (XVI of 1921), S.4].

63. Amount of fine. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

[Note: --- Provisions of sections 63 to 72 of Chapter III apply also to offences under Prohibition (Enforcement of Hadd) Order (P.O. No. 4 of 1979), Offence of Zina (Enforcement of Hudood) ordinance (VII of 1979) and Offence of Qazf (Enforcement of Hadd) Ordinance (VIII of 1979).

64. Sentence of imprisonment for non-payment of fine. In every case an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine,

if shall be competent to the Court which sentences such offender to direct by the sentence that in default of payment of the fine the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

65. Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable. The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

66. Description of imprisonment for non-payment of fine. The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

67. Imprisonment for non-payment of fine, when offence punishable with fine only. If the offence be punishable with fine only, the imprisonment which the Court imposes in default of payment of the fine shall be simple and the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

68. Imprisonment to terminate on payment of fine. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

69. Termination of imprisonment on payment of proportional part of fine. If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

#### Illustration

A is sentenced to fine of one hundred rupees and to four months imprisonment in default of payment. Here if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment. A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time which A continues in imprisonment. A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment. A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the

time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

70. Fine leviable within six years, or during imprisonment; Death not to discharge property from liability. The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of the period; and the death of the offender does not discharge from the liability any property which would, after his death be legally liable for his debts.

71. Limit of punishment of offence made up of several offences. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would be itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

#### Illustrations

(a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating and, also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b) But if, while A is beating Z Y interferes, and A intentionally strikes Y, here as the blow given to Y is not part of the act whereby A voluntarily causes hurt to Z. A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow give to Y.

[Note. Provisions of sections 71 and 72 of Chapter III apply also to offences under Offences Against Property (Enforcement of Hudood) Ordinance (VI of 1979)].

#### COMMENTARY

Two different cases registered on two different occasions by means of two separate F.I.Rs. resulting in the conviction of the accused by two separate judgments. Sentence in both the cases were to run consecutively. Petition seeking order that sentence in both cases to run concurrently was dismissed.10b

72. Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that is doubtful of which of these offences he is

guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

73. Solitary confinement. Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

a time not exceeding one month if the term of imprisonment shall not exceed six months;

a time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year;

a time not exceeding three months if the term of imprisonment shall exceed one year.

74. Limit of solitary confinement. In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the period of solitary confinement of not less duration than such periods, and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

75. Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction. Whoever, having been convicted,—

(a) by a Court in Pakistan of an offence punishable under Chapter XII or Chapter XVII of this Code with 10[imprisonment] of either description for a term of three years or upwards, or

(b) [Omitted by Ordinance, XXVII of 1981].

Shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to imprisonment for life, or to imprisonment of either description for a term which may extend to ten years.

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#### CHAPTER IV GENERAL EXCEPTIONS

76. Act done by a person bound, or by mistake of fact believing himself bound by law. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not reason of a mistake of law in good faith believes himself to be, bound by law to do it.

##### Illustrations

(a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

77. Act of Judge when acting judicially. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

#### COMMENTARY

Judicial Officer, Remarks against, Expungement of. Prayer for. Undoubtedly, order to place highly adverse observations of Court, on confidential record of appellant, can result in considerable harm to him in respect of his future service career for an act done by him while performing his duties as a Judge, and principle underlying Section 77, PPC and Section 197, Cr.P.C. is that no liability is incurred by an officer for doing an act in his judicial capacity. This principle is not applicable in this case. High Court found that order impugned before it was passed by appellant relying on provisions of law which were no more on statute book. Moreover pendency of some matter before competent forum within knowledge of appellant, raised apprehension in mind of Court that he was acting mala fide. Held: No exception can be taken to observations of High Court that appellant was not a fit person to be conferred with judicial or quasi-judicial powers. Appeal dismissed.<sup>11</sup>

Leave to appeal was granted to consider whether the principles underlying, the provision of S. 77, P.P.C., S. 197, Cr.P.C. and other laws affording protection to judicial officers when performing their functions as such were not attracted to the case and also whether the official concerned was not entitled to an opportunity of hearing before awarding the adverse remarks since they may result in depriving him of the assignment of judicial and quasi-judicial functions for ever.<sup>12</sup>

78. Act done pursuant to the judgment or order of Court. Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

79. Act done by a person justified, or by mistake of fact believing himself justified, by law. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

#### Illustration

A sues Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment, exerted in good faith of the power which the law gives to all persons of apprehending murderers in the Act, seizes Z in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.



80. Accident in doing a lawful act. Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

#### Illustration

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here if there was no want of proper caution on the part of A, his act is excusable and not an offence.

81. Act likely to cause harm, but done without criminal intent, and to prevent other harm. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm, to person or property.

Explanation: It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

#### Illustrations

(a) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him incurring the risk of running down C.

(b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act. A is not guilty of the offence.

82. Act of a child under seven years of age. Nothing is an offence which is done by a child under seven years of age.

83. Act of a child above seven and under twelve of immature understanding. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

84. Act of a person of unsound mind. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

#### COMMENTARY

Finding by board of doctors after medical examination of accused that accused was mentally fit, would negate plea of insanity u/s. 84.13

Act of a person of unsound mind — Crucial point of time for deciding whether the benefit of S. 84, P.P.C. should be given or not is the material time when the offence took place — If at such time a person is found to be labouring under such a defect of reason as not to know the nature of the act he was doing or that even if he knew it, he did not know it was either wrong or contrary to law, then S. 84, P.P.C. must be applied — In coming to such a conclusion the relevant circumstances like the behaviour of the accused before the commission of the offence and after the commission of the offence, should be taken into consideration. Legislature has deliberately used the words “unsoundness of mind” instead of the word “insanity” in S. 84, P.P.C. in order to give it a broader spectrum because “unsoundness of mind” cover almost all the ailments concerning mind — Pivotal question would be as to whether the accused was capable enough to know the nature of the act committed by him, whether he was permanently incapable in view of his antecedents, subsequent and past conduct, family history and opinions of medical Experts, or was incapable during certain intervals and thereafter causes for permanent or temporary incapability will have to be examined which can possibly include lunacy, idiocy, imbecility non compos mentis, temporary paroxysm, insanity/insane delusions, somnambulish, frantic humour and its gravity, maniacal trend, periodic epileptic fits, delirium tremens, irresistible impulsive insanity, obsession, mania, amentia, dementia and melancholia. Medical insanity is distinct from legal insanity and Courts are only concerned with the legal and not with the medical view of the question — Legal insanity only furnishes a ground for exemption from criminal responsibility — No legal insanity can exist unless the cognitive faculties of the accused are completely impaired as a result of unsoundness of mind — Unsoundness of mind in order to constitute legal insanity must be such as should make the offender incapable of knowing the nature of the act or what he is doing is wrong or contrary to law. Where the plea of insanity is taken the burden of proving such degree of insanity which exempts the accused from criminal liability is on the accused himself. Mere inadequacy of motive is no proof of insanity. 13a

85. Act of a person incapable of judgment by reason of intoxication caused against his will. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

86. Offence requiring a particular intent or knowledge committed by one who is intoxicated. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

87. Act not intended and not known to be likely to cause death or grievous hurt, done by consent. Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death, or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by

reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to the risk of that harm.

#### Illustration

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts, Z. A. commits no offence.

88. Act not intended to cause death, done by consent in good faith for person's benefit. Nothing which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

#### Illustration

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under the painful complaint, but not intending to cause Z's death, and intending, in good faith Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

89. Act done in good faith for benefit of child or insane person, by or by consent of guardian. Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person:

Provisos: Provided:

First: That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly: That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly: That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

Fourthly: That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

#### Illustration

A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

90. Consent known to be given under fear or misconception. A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person. If the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child. Unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

91. Exclusion of acts which are offences independently of harm caused. The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent or on whose behalf the consent is given.

#### Illustrations

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm"; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

92. Act done in good faith for benefit of a person without consent. Nothing is an offence by reason of any harm which it may cause to a person by whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit;

Provisos: Provided:

Firstly: That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Secondly: That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly: That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly: That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

#### Illustrations

A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

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Consent of insane person. If the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child. Unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

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#### Illustrations

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm"; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

92. Act done in good faith for benefit of a person without consent. Nothing is an offence by reason of any harm which it may cause to a person by whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit;

Provisos: Provided:

Firstly: That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Secondly: That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly: That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly: That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

#### Illustrations

(a) Z is thrown from his horse, and is insensible, A, a surgeon, finds that Z requires to be trepanned. A not intending Z's death but in good faith for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b) Z is carried by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z but not intending to kill Z and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(c) A, a surgeon, sees child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(d) A is in a house which is on fire with Z a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child and intending, in good faith, the child's benefit. Here even, if the child is killed by the fall. A has committed no offence.

Explanation: Mere pecuniary benefit is not benefit within the meaning of Sections 88, 89 and 92.

93. Communication made in good faith. No communication made in good faith is an offence by reason of any harm to the person to whom it is made for the benefit of that person.

#### Illustration

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

94. Act to which a person is compelled by threats. Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence; Provided that person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1: A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2: A person seized by a gang of dacoits, and forced by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to

force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

#### COMMENTARY

Benefit of S. 94. Not available where offence is committed under threats of removal from service (Majority). 14

Treason. Duress cannot be pleaded in avoidance of malice.<sup>15</sup>

95. Act causing slight harm. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm, is so slight that no person of ordinary sense and temper would complain of such harm.

#### COMMENTARY

Provision of S. 95 is legal recognition of maxim de minimus non curate lex (Law does not take account of trifles.) Even intentional "harm" specified in S.95 is excused because of its triviality.<sup>1</sup>

#### Of the Right of Private Defence

96. Things done in private defence. Nothing is an offence which is done in the exercise of the right of private defence.

#### COMMENTARY

Plea of private defence can be allowed even if it is not specifically pleaded by accused, provided such an inference is warranted from evidence on record which of course, should be very clear and should have been properly raised upon evidence and surrounding circumstances of the case.<sup>2</sup>

Question of right of self-defence is necessarily the question of fact. It has to be decided in light of the circumstances of each case.<sup>3</sup>

Right of private defence under S. 96 is a shield used by accused to avert an attack. It cannot be used as a device for provoking an attack. It can only be a preventive and cannot be used for retaliatory purposes. Right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. The law of private defence does not confer the right on an aggressor rather it is a right conferred on the aggressee.<sup>3a</sup>

Prosecution is not absolved of responsibility to prove the case against accused when plea of self-defence is taken by accused but is not proved by him.<sup>3b</sup>

97. Right of private defence of the body and of property. Every person has a right, subject to the restrictions contained in Section 99, to defend:

First: His own body, and the body of any other person, against any offence affecting the human body;

Secondly: The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

98. Right of private defence against the act of a person of unsound mind, etc. When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

#### Illustrations

(a) Z under the influence of madness, attempts to kill A: Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b) A enters by night house which he is legally entitled to enter Z in good faith, taking A for a house breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

99. Acts against which there is no right of private defence. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done by a public servant acting in good faith under colour of his office, though that act may be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, but the direction of a public servant acting in good faith under colour of his office though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which the right may be exercised. The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1: A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2: A person is not deprived of the right of private defence against an act done, or attempted to be done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

#### COMMENTARY



Illegal detention. Even if deceased has slipped away from illegal custody, the police had no right to pursue and plea of self-defence was not available.<sup>3c</sup>

Right of private defence. Exercise of. Held: Where sustained attack disproportionate to threat be launched and reactions of offenders appear to be retaliatory or punitive in nature and beating be severe and prolong, exercise of right of private defence being not in good faith and restraint not to be available.<sup>3d</sup>

Private defence. Right of. Extent of. Complainant party going unarmed towards spot, stopping at chowk and not coming chowk. Held, No grievous hurt to be apprehend in circumstances of case. Held further: Acts against which complete right of private defence extending to causing of death undoubtedly not existing in case, right of private defence short of causing death to be exercised by accused. <sup>3e</sup>

100. When the right of private defence of the body extends to causing death. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely.

First: Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly: Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly: An assault with the intention of committing rape;

Fourthly: An assault with the intention of gratifying unnatural lust;

Fifthly: An assault with the intention of kidnapping or abducting;

Sixthly: An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

#### COMMENTARY

Private defence, right of. Plea not put forward in commitment proceedings but raised at trial as an alternate version. Record establishing that accused and their companions deliberately armed themselves and proceeded by a route leading to site of occurrence. Held, accused were aggressors and no question of exercise of right of private defence could arise in their favour.<sup>3f</sup> Clause fourthly. Plea of private defence. Accused cannot be said to have exceeded in exercise of his right of private defence when plea of private defence is founded on grounds, firstly, that accused was deprived of his bicycle and secondly deceased attempted to commit sodomy with him. In such case, conviction-sentence against accused u/s. 304-I, PPC, on ground that he had exceeded in exercise of his right of private defence would be unsustainable, liable to be set aside with order of acquittal. <sup>3g</sup>

Land where occurrence took place shown to be in possession of convict party. Complainant party coming armed and adamant to dispossess them leading to present occurrence. Held: Convicts had right to defend their person as well as their property and as such conviction u/ss. 304(ii)/149 recorded against them merited setting aside.<sup>4</sup>

Plea of private defence. Accused cannot be said to have exceeded in exercise of his right of private defence when plea of private defence is founded on grounds, firstly, that accused was deprived of his bicycle and secondly deceased attempted to commit sodomy with him. In such case, conviction-sentence against accused u/s. 304-I, PPC, on ground that he had exceeded in exercise of his right of private defence would be unsustainable, liable to be set aside with order of acquittal.<sup>5</sup>

Right to defend the honour to the extent of even killing the aggressor, if need be there, is not only available to the aggressed lady but also to her husband, Mahran or the person in whose lawful custody she is residing.<sup>6</sup>

Right of private defence. Accused having opportunity to report preceding incident of deceased's immoral overture towards him to higher authorities but not availing it of, for his honour due to shame. He also having time and opportunity to have recourse to protection of his superiors. Held: In such case, right of private defence was not available and accused should not have resorted to open fire at unarmed deceased.<sup>7</sup>

101. When such right extends to causing any harm other than death. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

102. Commencement and continuance of the right of private defence of the body. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

103. When the right of private defence of property extends to causing death. The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:

First: Robbery;

Secondly: House-breaking by night;

Thirdly: Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling or as a place for the custody of property;

Fourthly: Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

104. When such right extends to causing any harm other than death. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, the theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

105. Commencement and continuance of the right of private of defence of property. The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

106. Right of private defence against deadly assault when there is a risk of harm to innocent person. If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

#### Illustration

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

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## CHAPTER V OF ABETMENT

[Provisions of Chapter V apply also to offences under Prohibition (Enforcement of Hadd) Order (P.O. 4 of 1979), Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979) and Offence of Qazf (Enforcement of Hadd) Ordinance (VIII of 1979).]

107. Abetment of a thing. A person abets the doing of a thing, who —

First: Instigates any person to do that thing; or

Secondly: Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly: Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1: A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, willfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2: Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

108. Abettor. A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1: The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2: To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound, A is guilty of instigating B to commit murder.

Explanation 3: It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor or any guilty intention or knowledge.

Illustrations

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby, causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house and is liable to the punishment provided for that offence.

(d) A intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4: The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

#### Illustration

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for this offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5: It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

#### Illustration

A conspires with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has, therefore, committed the offence defined in this section and is liable to the punishment for murder.

108A. Abetment in Pakistan, of offences outside it. A person abets an offence within the meaning of this Code who, in Pakistan, abets the commission of any act without and beyond Pakistan which would constitute an offence committed in Pakistan.

#### Illustration

A, in Pakistan, instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.

109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.<sup>7a</sup>

8[Provided that, except in case of Ikrah-i-Tam, the abettor of an offence referred to in Chapter XVI shall be liable to punishment of Tazir specified for such offence including death.]

Explanation: An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

#### Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official function. B accepts the bribe. A has abetted the offence defined in Section 161.

(b) A instigates B to give false evidence. B, in consequence of the instigation commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby cause Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

#### COMMENTARY

Provisions of S. 109 after their amendment by Criminal Law Amendment Ordinance, 1990 in compliance with directions of Shariat Appellate Bench of Supreme Court are no longer repugnant of Injunctions of Islam. These provisions have been brought in conformity with Injunctions of Islam through amendment by Amendment Ordinance of 1990.<sup>9</sup>

Effect of amendment of S. 109 by Criminal Law Amendment Ordinance, 1990 is that in case of commission of offences enumerated in Chapter XVI, PPC, where punishment provided for the offence is Qisas for accused who actually commits qatl-i-amd, the abettor would be liable to punishment of tazir.<sup>10</sup>

110. Punishment of abetment if person abetted does act with different intention from that of abettor. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

111. Liability of abettor when one act abetted and different act done. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

Proviso.

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Illustration

(a) A instigates a child to put poison into the food of Z and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here if the child was acting under the influence of A's instigation. And the act done was under the circumstances a probable consequence of the abetment. A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(b) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft: for the theft was a distinct act, and not a probable consequence of the burning.

(c) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery and provides them with arms for that purpose, B and C break into the house, and being resisted by Z one of the inmates murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

112. Abettor when liable to cumulative punishment for act abetted and for act done. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Illustration

A instigates B to resist by force a distress made by a public servant. B in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress, and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress A will also be liable to punishment for each of the offences.

113. Liability of abettor for an effect caused by the act abetted different from that intended by the abettor. When an act is abetted with the intention on the part of the abettor of causing a particular effect and an act for which the abettor is liable in consequence of the abetment, causes a different effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

#### Illustration

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely for cause death. A is liable to be punished with the punishment provided for murder.

114. Abettor present when offence is committed. Whenever any person, who is absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

115. Abetment of offence punishable with death or imprisonment for life, if offence not committed, if act causing harm be done in consequence. Whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

#### Illustration

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or imprisonment for life. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

116. Abetment of offence punishable with imprisonment—If offence be not committed. Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by the Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both;

If abettor or person abetted be a public servant whose duty it is to prevent offence: and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for



that offence, for a term which may extend to one-half of the longest term provided for that offence or with such fine as is provided for the offence, or with both.

#### Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(b) A instigates B to give false evidence. Here, if B does not give false evidence A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(c) A, a police officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d) B, abets the commission of a robbery by A, a police officer, whose duty it is to prevent that offence. Here though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

117. Abetting commission of offence by the public or by more than ten persons. Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### Illustration

A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place; for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

118. Concealing design to commit offence punishable with death or imprisonment for life, if offence be committed; if offence be not committed. Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or 2[imprisonment for life,

voluntarily conceals by any act or illegal omission, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design,

shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years; and in either case shall also be liable to fine.

#### Illustration

A knowing that dacoits is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads

the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

119. Public servant concealing design to commit offence which it is his duty to prevent. Whoever, being a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent.

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

if offence be committed; shall, if the offence be committed, be punished with imprisonment with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

if offence be punishable with death, etc., if the offence be punishable with death, 3[imprisonment for life] or with imprisonment of either description for a term which may extend to ten years;

if offence be not committed, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

#### Illustration

A, an officer of police, being legally bound to give information of all designs as to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provisions of this section.

120. Concealing design to commit offence punishable with imprisonment. Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment;

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design.

If offence be committed; if offence be not committed; shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

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## CHAPTER V-A CRIMINAL CONSPIRACY

[Note. Provisions of Chapter V-A apply to offences under Prohibition (Enforcement of Hadd) Order (P.O. 4 of 1979), Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979) and Offence of Qazf (Enforcement of Hadd) Ordinance (VIII of 1979)]

120A. Definition of criminal conspiracy. When two or more persons agree to do, or cause to be done,

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy;

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation: It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

120B. Punishment of criminal conspiracy, (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 4[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine, or with both.

### COMMENTARY

Criminal conspiracy. Meaning and scope. Nature of word "agreement," as used in relation to offence of conspiracy. Conspiracy is not to be construed in any technical sense as under the law of contract. Agreement to commit offence may be express or implied. Meeting of minds, a mutual implied understanding or tacit agreement, working of all parties together with a single design for accomplishment of common purpose. Sufficient to constitute conspiracy (Majority). Conspiracy as envisaged in S. 120-A, must be product of two consenting minds uninfluenced by any consideration of threat, intimidation, coercion or undue influence (Minority). 4a

Mere knowledge, acquiescence or approval of an act without (sic) is not sufficient to bring a case within the mischief of S. 120-B, P.P.C. In order to constitute a criminal conspiracy there should be a meeting of minds for the purpose of doing an illegal act.<sup>5</sup>

Registration of case. Jurisdiction of High Court at the Principal Seat could not be involved in respect of the Press Conferences addressed by the accused at Islamabad. Contents of the

Constitutional petition did not, prima facie, establish that the provisions of Ss. 120-B, 121-A & 123-A, P.P.C. were attracted to the allegations made against the accused therein. Constitutional petition was dismissed in circumstances.<sup>6</sup>

Appeal against acquittal. First Information Report showed that no agreement between the accused and others for doing away with the complainant etc. appeared to have been effected, rather the offer made by accused had been declined and the offence of criminal conspiracy, therefore, had not been committed. Accused, even if armed at the relevant time, had not made any utterance or gesture whatsoever calculated to intimidating complainant etc. and no offence under S. 506, P.P.C. was even disclosed. Trial Court in the circumstances had not committed any mistake in law or fact in acquitting the accused under S. 249-A, Cr.P.C. Appeal against acquittal of accused was dismissed accordingly.<sup>7</sup>

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## CHAPTER VI OF OFFENCES AGAINST THE STATE

121. Waging or attempt to wage war or abetting waging of war against Pakistan. Whoever wages war against Pakistan, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life shall also be liable to fine.

### Illustration

A joins an insurrection against Pakistan. A has committed the offence defined in this section.

121-A. Conspiracy to commit offences punishable by Section 121. Whoever within or without Pakistan conspires to commit any of the offences punishable by Section 121, or to deprive Pakistan of the sovereignty of her territories or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Central Government or any Provincial Government, shall be punished with imprisonment for life or any shorter term, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.

Explanation: To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

### COMMENTARY

To overthrow lawful Government. Activities of. Conviction for. Challenge to. Special Judge has formed a wrong view that a letter embodying sanction may itself be treated as a complaint. Complaint has been defined in section 4 (1) of Cr.P.C. Omission to file complaint in terms of Section 196, Cr.P.C. is not an irregularity curable under Section 537 of Cr.P.C., but an illegality. In letter treated as complaint by trial Court, there is no mention of any sanction of offence punishable under Section 121-A of PPC. Held: Trial of appellant has not been held under Section 121-A of PPC in accordance with law and trial Court had no jurisdiction to proceed with trial. Appeal accepted.<sup>8</sup>

122. Collecting arms, etc., with intention of waging war against Pakistan. Whoever collects men, arms or ammunition or otherwise prepares to wage war with intention of either waging or being prepared to wage war against Pakistan, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

123. Concealing with intent to facilitate design to wage war. Whoever, by any act, or by any illegal omission, conceals the existence of a design to wage war against Pakistan, intending by such concealment to facilitate or knowing it to be likely that such concealment will facilitate the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

123-A. Condemnation of the creation of the State and advocacy of abolition of its sovereignty. (1) Whoever, within or without Pakistan, with intent to influence or knowing it to be likely that he will influence, any person or the whole or any section of the public, in a manner likely to be prejudicial to the safety 9[or ideology] of Pakistan, or to endanger the sovereignty of Pakistan in respect of all or any of the territories lying within its borders, shall by words spoken or written, or by signs or visible representation, 9[abuse Pakistan or] condemn the creation of Pakistan by virtue of the partition of India which was effected on the fifteenth day of August, 1947, or advocate the curtailment or abolition of the sovereignty of Pakistan in respect of all or any of the territories lying within its borders, whether by amalgamation with the territories of neighbouring States or otherwise, shall be punished with rigorous imprisonment which may extend to ten years and shall also be liable to fine.

(2) Notwithstanding anything contained in any other law for the time being in force, when any person is proceeded against under this section, it shall be lawful for any Court before which he may be produced in the course of the investigation or trial, to make such order as it may think fit in respect of his movements or his association or communication with other persons, and of his activities in regard to dissemination of news, propagation of opinions, until such time as the case is finally decided.

(3) Any Court which is a Court of appeal or of revision in relation to the Court mentioned in sub-section (2) may also make an order under that sub-section.

10[123-B. Defining or unauthorisedly removing the National Flag of Pakistan from Government Building etc. Whoever deliberately defiles 1[or puts on fire] the National Flag of Pakistan, or unauthorisedly removes it from any building, premises, vehicle or other property of Government, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.]

#### COMMENTARY

Conspiracy. Evidence as to conspiracy by chance witness and Leaves-droppers was not relied upon. 1a

124. Assaulting President, Governor, etc., with intention to compel or restrain the exercise of any lawful power. Whoever, with the intention of inducing or compelling the President of

Pakistan, or the Governor of any Province, to exercise or refrain from exercising in any manner any of the lawful powers of the President, or Governor,

assaults, or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, the President, or Governor,

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

124-A. Seditious. Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Central or Provincial Government established by law shall be punished with imprisonment for life or shorter terms to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1: The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2: Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3: Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

#### COMMENTARY

Seditious. In case of seditious, the test is whether words used had tenancy to arouse contempt or hatred. Truth or falsity of matters is immaterial and may be an aggravating factor. The evidence relating to truth or falsity is not only inadmissible but also is not to be taken into consideration in not determining quantum of evidence.<sup>1b</sup>

125. Waging war against any [x x x] Power in alliance with Pakistan. Whoever wages war against the Government of any [xxx] Power in alliance or at peace with Pakistan or attempts to wage such war, or abets the waging of such war, shall be punished with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

126. Committing depredation on territories of Power at peace with Pakistan. Whoever commits depreciation, or makes preparations to commit depreciation, on the territories of any Power in alliance or at a peace with Pakistan, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depreciation, or acquired by such depredation.

127. Receiving property taken by war or depreciation mentioned in Sections 125 and 126. Whoever receives any property knowing the same to have been taken in the commission of any

of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and forfeiture of the property so received.

128. Public servant voluntarily allowing prisoner of State or war to escape. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with imprisonment for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

129. Public servant negligently suffering such prisoner to escape. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

130. Aiding escape of, rescuing or harbouring such prisoner. Whoever, knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation: A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in Pakistan, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

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## CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

131. Abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty. Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Naval or Air Force of Pakistan, or attempts to seduce any such officer, soldier, sailor, or airman from his allegiance or his duty, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation: 3[In this section, the words "officer", "soldier", "sailor" or "airman" include any person subject to the Pakistan Army Act, 1952 (XXXIX of 1952), or the Pakistan Navy Ordinance, 1961 (XXXV of 1961), or the Pakistan Air Force Act, 1953 (VI of 1953), as the case may be.]

132. Abetment of mutiny, if mutiny is committed in consequence thereof. Whoever, abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of Pakistan, shall, if mutiny be committed in consequence of that abetment, be punished with

death or with imprisonment for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

133. Abetment of assault by soldier, sailor or airman on his superior officer, when in execution of his office. Whoever abets an assault by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of Pakistan, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

134. Abetment of such assault, if the assault is committed. Whoever abets an assault by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of Pakistan, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

135. Abetment of desertion of soldier, sailor or airman. Whoever abets the desertion of any officer, soldier, sailor or airman, in the Army, Navy or Air Force of Pakistan, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

136. Harboursing deserter. Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier, sailor or airman, in the Army, Navy or Air Force of Pakistan, has deserted, harbours such officer, soldier, sailor or airman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Exception: This provision does not extend to the case in which the harbour is given by a wife to her husband.

137. Deserter concealed on board merchant vessel through negligence of master. The master or person in charge of a merchant vessel, on board of which any deserter from the Army, Navy or Air Force of Pakistan is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

138. Abetment of act of insubordination by soldier, sailor or airman. Whoever abets what he knows to be an act of insubordination by an officer, soldier, sailor or airman, in the Army, Navy or Air force of Pakistan, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

138-A. Application of foregoing sections to the Indian Marine Service. [Rep. by the Amending Act, 1934 (XXXV of 1934), Section 2 and Sch.]

4[139. Persons subject to certain Acts. No person subject to the Pakistan Army Act, 1952 (XXXIX of 1952), the Pakistan Air Force Act, 1953 (VI of 1953), or the Pakistan Navy Ordinance, 1961 (XXXV of 1961), is subject to punishment under this Code for any of the offences defined in this Chapter.]



[Note. Provisions of section 140 of Chapter VII apply to offences under Offences Against Property (Enforcement of Hadd) Ordinance (VI of 1979)].

140. Wearing garb or carrying token used by soldier, sailor or airman. Whoever, not being a soldier, sailor or airman in the Military, Naval or Air Service of Pakistan, wears any garb or carries any token any token resembling any garb or token used by such a soldier, sailor or airman with the intention that it may be believed that he is such a soldier, sailor or airman with the intention that it may be believed that he is such a soldier, sailor or airman, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

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## CHAPTER VIII OF OFFENCES AGAINST THE PUBLIC TRANQUILITY

141. Unlawful assembly. An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly is:

First: To overawe by criminal force, or show of criminal force, the Central or any Provincial Government or Legislature, or any public servant in the exercise of the lawful power of such public servant; or

Second: To resist the execution of any law, or of any legal process; or

Third: To commit any mischief or criminal trespass, or other offence; or

Fourth: By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of a way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth: By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation: An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

### COMMENTARY

Assembly. An assembly may become unlawful after the time of assembly but it must be proved there was a circumstance applicable to all the persons assembled which influenced them all in one direction.<sup>4a</sup>

142. Being member of unlawful assembly. Whoever being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

143. Punishment. Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

144. Joining unlawful assembly armed with deadly weapon. Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

145. Joining or continuing in unlawful assembly, knowing that it has been commanded to disperse. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

146. Rioting. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

147. Punishment for rioting. Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### COMMENTARY

Principal offenders. A large number of accused were charged with offences under Secs. 147, 302/34, 326/149, 35 and 48. The principal offenders were convicted under Secs. 302/34. Whether conviction of other accused for offence different from that found committed by principal offenders was illegal.4b

148. Rioting, armed with deadly weapon. Whoever is guilty of rioting, being armed with a deadly weapon or with anything, which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### COMMENTARY

Accused committing offence of rioting when armed with deadly weapons. Held: They would be guilty u/s. 148.4c

Each accused would be liable for act committed by him during occurrence when occurrence was not result of pre-meditation or pre-planning but was result of sudden flare-up. Accused persons cannot be held vicariously responsible for murder of deceased from fatal injury by their co-accused. Accused who had not caused any injury either to deceased or to injured PW would be entitled to acquittal by having benefit of doubt when their participation in such occurrence lacks reliable corroboration.5

Uncorroborated evidence of interested eye-witnesses would not be safe for recording conviction/sentence against accused. Held: Prosecution did not inspire confidence and

appellants were entitled to acquittal after setting aside their conviction/sentence u/ss. 148/436/325/149.6

149. Every member of unlawful assembly guilty of offence committed in prosecution of common object. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

#### COMMENTARY

Provision of S. 149 would not be attracted when occurrence was not result of pre-concert and pre-meditation but had occurred on account of sudden flare up. In such case, each accused would be liable for his individual act and conviction/sentence u/ss. 302/149 would not be sustainable.6a

Application of S. 149, Penal Code. Unlawful assembly. Common object. Prosecution must prove presence and participation of each of the accused in unlawful assembly for conviction under S. 149, Penal Code.6b

Question arising whether all persons who even did not participate in any manner to facilitate murder of deceased could be saddled to have common object with real culprits in committing murder. Held: In circumstances of case, Judge in High Court was rightly influenced by relevant considerations and rightly upheld convictions of those accused who physically and practically participated in facilitation and in murder of deceased.6c

Where a number of persons laid trap and attacked the deceased, all of them were equally liable for murder. Those not giving actual blows cannot be discharged of liability.6d

High Court acquitted two of five accused. The conviction of remaining accused under Sec. 148 was not maintainable. Thus constrictive liability cannot be placed.6e

In the absence of evidence of any special intention or knowledge, two of the members of assembly could not be convicted under Secs. 302/34, PPC. Unless there by intention or knowledge of one of the kinds specified in Sec. 299, no conviction for culpable homicide can be had. 6f

150. Hiring, or conniving at hiring, of persons to join unlawful assembly. Whoever hires or engages, or employs or promotes or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

151. Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully

commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation: If the assembly is an unlawful assembly within the meaning of Section 141, the offender will be punishable under Section 145.

152. Assaulting or obstructing public servant when suppressing riot, etc. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct a public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.

153. Wantonly giving provocation with intent to cause riot— if rioting be committed; if not committed. Whoever malignantly, or wantonly, by doing any thing which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

7[153-A. Promoting enmity between different groups, etc. Whoever:---

(a) by words, either spoken or written, or by signs, or by visible representations or otherwise, promotes or incites, or attempts to promote or incite, on grounds of religion, race, place of birth, residence, language, caste or community or any other grounds whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or

(b) commits, or incites any other person to commit, any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities or any groups of persons identifiable as such on any ground whatsoever and which disturbs or is likely to disturb public tranquility; or

(c) organizes, or incites any other person to organize, any exercise, movement, drill or other similar activity intending that the participants in any such activity shall use or be trained to use criminal force or violence knowing it to be likely that the participants in any such activity will use or be trained to use criminal force or violence or participates, or incites any other person to participate, in any such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in any such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community or any group or person identifiable as such on any ground whatsoever and any such activity for any reason whatsoever cause or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

shall be punished with imprisonment for a term which may extend to five years and with fine.

Explanation I: It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing, or having or have a tendency to produce, feelings of enmity or hatred between different religious, racial, language or regional groups or castes or communities.

8[153-B. Inducing students, etc., to take part on political activity. Whoever by words, either spoken or written, or by signs or by visible representations or otherwise, induces or attempts to induce any student, or any class of students or any institution interested in or connected with students, to take part in any political activity 9[which disturbs or undermines, or is likely to disturb or undermine, the public order] shall be punished with imprisonment which may extend to two years or with fine or with both.]

154. Owner or occupier of land on which an unlawful assembly is held. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding on thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

155. Liability of person for whose benefit riot is committed. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot taken place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

156. Liability of agent of owner or occupier for whose benefit riot is committed. Whenever a riot committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

157. Harboursing persons hired for an unlawful assembly. Whoever harbours, receives or assembles, in any house or premises in his occupation or charge, or under his control any persons, knowing that such persons have been hired, engaged or employed, or are about to be

hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months or with fine, or with both.

158. Being hired to take part in an unlawful assembly or riot; or to go armed. Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in Section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both,

and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

159. Affray. When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray".

160. Punishment for committing affray. Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

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## CHAPTER IX OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

161. Public servant taking gratification other than legal remuneration in respect of an official act. Whoever, being or expecting to be a public servant, accepts or obtains or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or dis-service to any person, with the Central or any Provincial Government or Legislature or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

Explanation: "Expecting to be a public servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification". The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration". The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the 2[authority by which he is employed, to accept.]

"A motive or reward for doing". A person who receives a gratification as a motive for doing what he does not intend to do, or as reward for doing what he has done, comes within these words.

'Public Servant'. In this section and in sections 162, 163, 164, 165, 166, 167, 168, 169 and 409, 'public servant' includes an employee of any corporation or other body or organization set up, controlled or administered by, or under the authority of, the Federal Government.

#### Illustrations

(a) A, a munsif, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a case in favour of Z, has committed the offence defined in this section.

(b) A, holding the office of Counsel at the court of a Foreign Power accepts a lakh of rupees from the Minister of that Power. It does not appear, that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that Power with the Government of Pakistan. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of this official functions to that Power. A has committed the offence defined in this section.

(c) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z and this induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

#### COMMENTARY

Read with Prevention of Corruption Act (II of 1947), S. 5. Taking illegal gratification. Offence of Establishment of. Particular Act was not within duties of accused but he erroneously thinks that an act was within his official duty and accepted illegal gratification by inducing such erroneous belief in another person. Held: Such public servant was guilty of offence of taking illegal gratification.2a

Bribery. Attempt to obtain bribe is as much an offence as actual acceptance of receipt of bribe. Offence is complete even when public servant refuses to accept insufficient amount offered. No question of locus poentieniae arises in such cases.2b

Demand for illegal gratification and its actual receipt are distinct offences.2c

S. 161. Receiving money and undertaking to destroy telegram before the due date amounts to commission of offence under Sec. 161.2d

S. 161. Charging fee by doctor more than permitted under rules does not amount to gaining of pecuniary advantage.2e

S. 161. Bona fide as well as mala fide acts are included in the expression "official act" used in Sec. 161.2f

S.161. For the application of Sec. 161, it is not necessary that a public servant should in fact have the power to render service.2g.

S. 161. The complainant from whom bribe is extorted is to an abettor or an accomplice. His evidence should be scanned with care. 2h

Local Police has no jurisdiction to register case u/s. 161 read with S. 5(2), Prevention of Corruption Act, 1947 as it is a "scheduled offence" under Punjab Anti-Corruption Establishment Rules, 1985 and falls within exclusive jurisdiction of Anti-Corruption Establishment constituted under Punjab Anti-Corruption Establishment Ordinance, 1961.3

Conviction/sentence appealed against on defence plea of false implication. No witness whatsoever produced by appellant at trial stage in support of his defence plea. Evidence on record establishing beyond all sorts of doubts that appellant had accepted bribe and tainted currency notes were recovered from his possession. Held: Conviction merited affirmance as unexceptional but sentence of two months' simple imprisonment merited reduction into sentence already undergone.4

Conviction/sentence would be unsustainable when raid was conducted by officials of Anti-corruption Establishment and Police without associating any Magistrate.5

Contention that two material witnesses (Complainant and Taxi driver) were declared hostile and their evidence also suffers from material contradiction and that evidence of three official witnesses does not inspire confidence. PWs 1 & 2 have fully supported initial incident as well as lodging of F.I.R. and arrangement regarding passing of tainted money. Although obliging statements have been made by them in latter part of their examination-in-chief, their consistent statement is worthy of credit on almost all material points. Three official witnesses have also fully supported prosecution version on all material points as they witnesses payment of tainted and its recovery from possession of appellant. Once money is shown to have passed on to accused through a decoy witness a rebuttable presumption arises u/s. 4 of Act II of 1947 that tainted money was received as illegal gratification. Appellant has failed to rebut that presumption. Learned Trial Court has taken note of some contradictions in statements of three official witnesses but has rightly held them to be of trival nature. Alleged false implication of appellant due to grudge of I.O. is not at all plausible as appellant admitted his presence on spot at time of raid but why did he intervene when whole operation was being supervised by a Magistrate. Conviction and sentence awarded by Trial Court is maintained. Appeal dismissed.6

Illegal gratification, obtaining of. Conviction for. Challenge to. Neither challan nor sanction order bears signature of Trial Judge. Sanction order was not exhibited in Court to form part of record. Appeal can be decided only on basis of material available on record and not on any document which is not part of record. Held: Sanction order even if available in file of lower Court, cannot be looked into as same is not exhibited in evidence to form part of record. Held further; It cannot be said that Trial Court acquired jurisdiction legally.7

Evidence conclusively showing that accused was holding bribe money in his hand. When raiding party introduced itself, he threw bribe money on the ground and in his first statement he denied having received any money. Held: (i) In facts of case, no benefit could be claimed by convict for not over-hearing conversation. (ii) Case against convict was adequately and sufficiently proved by witnesses who had no motive to falsely implicate him. (iii) There were no flaws in prosecution version, benefit of which could be extended to convict.8



162. Taking gratification, in, order, by corrupt or illegal means, to influence public servant. Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, gratification whatever, as a motive of reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or dis-service to any person with the Central or any Provincial Government or Legislature, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### COMMENTARY

Conviction/sentence for taking bribery based on uncorroborated testimony of complainant, would merit setting aside when both recovery witnesses did not support prosecution case and were declared hostile.<sup>9</sup>

Appreciation of evidence. Neither the payment of money to the accused as alleged by the complainant was proved beyond reasonable doubt, nor the alleged recovery of the said amount from the accused was proved. Recovery witnesses did not support the prosecution version and were declared to be hostile. Even if payment of the said amount to the accused was admitted, the possibility of the same having been meant to engage a counsel for filling a bail petition of the complainant's brother could not be ruled out. Accused was acquitted in circumstances.<sup>1</sup>

163. Taking gratification, for exercise of personal influence with public servant. Whoever accepts or obtains or agrees to accepts or attempts to obtain, from any person, for himself or for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or dis-service to any person with the Central or any Provincial Government or Legislature, or with any public servant, as such, shall be punished within simple imprisonment for a term which may extend to one year, or with fine, or with both.

#### Illustration

An advocate who receives a fee for arguing a case before a Judge: a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist, a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust,— are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

164. Punishment for abetment by public servant of offences defined in Section 162 or 163. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

#### Illustration

A is a public servant. B, A's wife receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

165. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing with-out consideration, or for a consideration which he knows to be inadequate,

from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate,

or from any person whom he knows to be interested in or related to the person so concerned,

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### Illustrations

(a) A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith. A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(b) A, a Judge, buys of Z, who has a case pending in A's Court. Government promissory-notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(c) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without consideration.

165-A. Punishment for abetment of offences defined in Sections 161 and 165. Whoever abets any offence punishable under section 161 or section 165 shall, whether the offence abetted is or is not committed in consequence of the abetment, be punished with the punishment provided for the offence.

2[Repealed section 165-B is given below:--

165-B. Certain abettor excepted. A person shall be deemed not to abet an offence punishable under section 161 or 165 if he is induced, compelled, coerced, or intimidated to offer or give any such gratification as is referred to in section 161 for any of the purposes mentioned therein, or any valuable thing without consideration, or for an inadequate consideration, to any such public servant as is referred to in section 165.]

166. Public servant disobeying law with intent to cause injury to any person. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

#### Illustration

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

167. Public servant framing an incorrect document with intent to cause injury. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

168. Public servant unlawfully engaging in trade. Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

169. Public servant unlawfully buying or bidding for property. Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

170. Personating a public servant. Whoever, pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description, for a term which may extend to two years, or with fine, or with both.

171. Wearing garb or carrying token used by public servant with fraudulent intent. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description, for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

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CHAPTER IX-A  
OF OFFENCES RELATING TO ELECTIONS

171-A. "Candidate", "Electoral right" defined. For the purposes of this Chapter—

(a) "candidate" means a person who has been nominated as a candidate at any election and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate thereat; provided that he is subsequently nominated as a candidate at such election;

(b) "electoral right" means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

171-B. Briber. (1) Whoever—

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right.

Commit the offence of bribery:

Provided that a declaration of public policy or a promise of public action shall not be an offence under the section.

(2) A person who offers or agrees to give or offer or attempts to procure a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

171-C. Undue influence at elections. (1) Whoever (sic) (sic) or attempts to interfere with the free exercise of any (sic) rights commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person, in whom he is interested, will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

171-D. Personation at elections. Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who have voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

171-E. Punishment for bribery. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both;

Provided that bribery by treating shall be punished with fine only.

Explanation: 'Treating' means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

171-F. Punishment for undue influence of personation at an election. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

171-G. False statement in connection with an election. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

171-H. Illegal payments in connection with an election. Whoever with out the general or special authority in writing of a candidate incurs or authorizes expenses on account of the holding of any public meeting, or any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees;

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

171-I. Failure to keep election accounts. Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.

3[171-J. Inducing any person not to participate in any election or referendum etc. Whoever by words, either spoken or written, or by visible representations, induces or, directly or indirectly, persuades or instigates, any person not to participate or to boycott, any election or referendum, or not to exercise his right of vote thereat, shall be punishable with imprisonment of either description for a term which may extend to three years, or with fine which may extend to five lac rupees, or with both.]

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## CHAPTER X

### OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

172. Absconding to avoid service of summons or other proceeding. Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons or notice or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

173. Preventing service of summons or other proceeding. Whoever in any manner intentionally prevents the serving on himself, or on other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order,

or intentionally prevents the lawful affixing to any place of any such summons, notice or order,

or intentionally removes any such summons, notice or order, from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent as such public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

174. Non-attendance in obedience to an order from public servant. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proceeding from any public servant legally competent, as such public servant, to issue the same,

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

4[or, if the proclamation be under section 87 of the code of Criminal Procedure, 1898, with imprisonment which may extend to three years, or with fine, or with both.]

#### Illustrations

(a) A, being legally bound to appear before the High court of 5[Sindh] in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(b) A, being legally bound to appear before a Zila Judge, as a witness, in obedience to summons issued by that Zila Judge, intentionally omits to appear. A has committed the offence defined in this section.

175. Omission to produce document to public servant by person legally bound to produce it. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

#### Illustration

A, being legally bound to produce a document before a Zila Court, intentionally omits to produce the same. A has committed the offence defined in this section.

176. Omission to give notice or information to public servant by person legally bound to give it. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the notice or information required to be given is in respect of the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order

to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both;

or, if the notice of information required to be given is required by an order passed under sub-section (1) of Section 565 of the Code of Criminal Procedure, 1898, with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

177. Furnishing false information. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the information which he is legally bound to give is in respect of the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### Illustrations

(a) A. a landholder, knowing of the commission of a murder within the limits of his estate. Willfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(b) A. a village watchmen, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under Clause 5, Section VII, Regulation II, of 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police station, willfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different directions. Here A is guilty of the offence defined in the latter part of this section.

Explanation: In section 176 and in this section the word "offence" includes any act committed at any place out of Pakistan, which, if committed in Pakistan, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and the word "offender" includes any person who is alleged to have been guilty of any such act.

178. Refusing oath or affirmation when duly required by public servant to make it. Whoever, refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

179. Refusing to answer public servant authorized to question. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such



public servant shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

180. Refusing to sign statement. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees, or with both.

181. False statement on oath or affirmation to public servant or person authorized to administer an oath or affirmation. Whoever, being legally bound by an oath or affirmation to state the truth on any subject to any public servant or other person authorized by law to administer such oath or affirmation, makes, to such public servant or other person as aforesaid, touching that subject any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

182. False information with intent to cause public servant to use his lawful power to the injury of another person. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustration

(a) A informs a magistrate that Z, a police officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

COMMENTARY

Complaint. It did not make any difference that instead of filing a regular complaint before a Magistrate, Deputy Commissioner had filed a complaint before police to investigate the case and send up the accused for trial. The cases in which misrepresentation are made before a public officer fall under Sec. 182. The refusal to take cognizance in the absence of complaint is no bar for a further trial and does not operate as an acquittal.5a

Appeal against acquittal. Accused could not be said with certainty to have known or believed that the information contained in his supplementary statement given to the police was false and was intended to cause injury and annoyance to the person mentioned therein. Trial Court therefore, justified in holding that there was no possibility of the conviction of the accused in the case. Appeal against acquittal of accused by Trial Court under S.249-A, Cr.P.C. was dismissed in limine in circumstances.6

Quashing of proceedings. Allegations made in the complaint against accused disclosed an offence and it was for the Trial Court to weigh evidence and to determine whether the allegation were false or true. No legal infirmity was found in Trial Court's taking cognizance against the accused which was even in compliance of S. 195, Cr.P.C. and it was too premature at such stage to say that the investigation carried out in the case was biased. Application under S. 561-A, Cr.P.C. was dismissed accordingly.7

Proceedings u/s. 182 cannot be initiated by Police without appropriate order of Area Magistrate about discharge order of accused. This free hand cannot be granted to police as the same would lay foundation of injustice to inconvenience of complainant (s). supervisory jurisdiction of Area Magistrate cannot be brushed aside, and violated by police to set law in motion against complainant by initiating proceedings u/s. 182.8

Submission of kalandara by police before Assistant Commissioner to initiate proceedings u/s. 182 would be simply an abuse of process of law when there was no appropriate order of discharge of accused in FIR filed by complainant. In such case, proceedings u/s. 182 against complainant would be in exercise in futility and would have no fall on ground like a house of cards.9

183. Resistance to the taking of property by the lawful authority of a public servant. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

184. Obstructing sale of property offered for sale by authority of public servant. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, with both.

185. Illegal purchases or bid for property offered for sale by authority of public servant. Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such

bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

186. Obstructing public servant in discharge of public functions. Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

#### COMMENTARY

FIR registered against Advocates/bailiffs for raids conducted by them in pursuance of illegal search warrant issued by Anti-Terrorism Court. High Court finding that raid conducted by Advocates/bailiffs was protected under Ss. 78 and 79, PPC and registration of FIR against Advocates/bailiffs was without lawful authority. High Court quashing FIR against Advocates/bailiffs with direction that Advocates/bailiffs shall be entitled to compensatory costs of Rs.10,000/- payable by State.<sup>1</sup>

187. Omission to assist public servant when bound by law to give assistance. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such assistance be demanded of him by public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

188. Disobedience to order duly promulgated by public servant. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property on his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation: It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produced or is likely to produce harm.

## Illustration

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

189. Threat of injury of public servant. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

190. Threat of injury to induce person to refrain from applying for protection to public servant. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

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## CHAPTER XI

### OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

191. Giving false evidence. Whoever being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1: A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2: A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

#### Illustrations

(a) A. in support of a just claim which B has against Z for one thousand rupees, falsely swears on trial that he heard Z admit the justice of B's claim. A has given false evidence.

(b) A. being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be handwriting of Z. here A states that which he knows to be false, and therefore gives false evidence.

(c) A. knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z: A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z. A has not given false evidence.

(d) A. being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(e) A. an interpreter or translator, gives or certifies as a true interpretation or translation of a statement, or document, which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

#### COMMENTARY

Conviction/sentence recorded when perjury offence was not proved in accordance with procedure under Chapter XXII of Cr.P.C. for summary trial, would be illegal and unsustainable.<sup>2</sup>

192. Fabricating false evidence. Whoever causes any circumstance to exist makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstances, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceedings, is said to fabricate false evidence".

#### Illustrations

(a) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c) A. with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the Police are likely to search. A has fabricated false evidence.

193. Punishment for false evidence. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceedings, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1:— A trial before a Court-martial is a judicial proceeding.

Explanation 2:— [Omitted by Ordinance XXVII of 1981]

Explanation 3: An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

#### Illustration

A. in enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding A has given false evidence.

#### COMMENTARY

Offence u/s. 193 can be tried by Court in whose proceedings was committed. Such Court, however, has discretion u/s. 476, Cr.P.C. to try offence itself or send case for trial of offence by Court of competent jurisdiction.<sup>4</sup>

False statements before High Court. Notice issued by High Court to accused. Accused admitting charge of making false statement. High Court taking lenient view and sentencing accused to one year's R.I. u/ss. 193, 205.<sup>5</sup>

Accused would not be liable u/ss. 193, 205 when alleged false statement was made under threat and was not intentional. Notice issued by High Court to accused in such case discharged.<sup>6</sup>

If the witness is honestly confused, Courts should ignore any inadvertent slip.<sup>7</sup>

No evidence was recorded against the accused who was also not provided an opportunity in terms of S. 342, Cr.P.C. to explain his position. Even otherwise accused as a prosecution witness had supported the case of prosecution in material particulars and appeared to be honestly confused. Accused was acquitted in circumstances.<sup>9</sup>

Perjury. Offence of. Conviction for. Appeal against. Appellant, a police constable was convicted for perjury by Additional Sessions Judge without recording evidence and observing procedure under Section 263, Cr.P.C. and appellant was also not provided opportunity in term of Section 342, Cr.P.C. to explain his position. Even otherwise appellant had supported case of prosecution materially. Held: Court should ignore such inadvertent slips. Appeal allowed.<sup>1</sup>

194. Giving or fabricating false evidence with intent to procure conviction of capital offence. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by any law for the time being in force, shall be punished with imprisonment for life, or with

rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine:

If innocent person be thereby convicted and executed ; and if an innocent person be convicted and executed in consequence of such false evidence the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or for a term of seven years or upwards. Whoever gives or fabricates false evidence intending thereby to cause, knowing it to be likely that he will thereby cause any person to be convicted of an offence which by any law for the time being in force is not capital, but punishable with imprisonment for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

#### Illustration

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is imprisonment for life or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such imprisonment for life or imprisonment, with or without fine.

196. Using evidence known to be false. Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated shall be punished in the same manner as if he gave of fabricated false evidence.

197. Issuing or signing false certificate. Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

198. Using as true a certificate known to be false. Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

199. False statement made in declaration which is by law receivable as evidence. Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

200. Using as true such declaration knowing it to be false. Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation: A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 and 200.

201. Causing disappearance of evidence of offence, or giving false information to screen offender. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

If a capital offence, shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with imprisonment for life, and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

If punishable with less than ten years' imprisonment, and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longer term of the imprisonment provided for the offence, or with fine, or with both.

#### Illustration

A. showing that B murdered Z, assists B to hide the body with intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

#### COMMENTARY

Appellants accused of going to remove dead body and cause disappearance of evidence of offence could not succeed in their object because of resistance offered by opposite-party. Dead body having not been removed, appellant, held, could only be convicted for an attempt to cause disappearance of evidence under S. 201, P.P.C. Conviction altered to one under S. 201/511 read with S. 34, P.P.C. in circumstances.<sup>2</sup>

Several accused were charged with two offences : murder and dis-appearance of evidence committed in course of same transaction. Charge under Se. 201 was framed only against one person. Joint trial did not vitiate.<sup>3</sup>

Disposal of clothes of deceased was intimately connected with disposal of body, and therefore with commission of crime of murder, offence under Sec. 201 must be held to have been established against accused.<sup>3a</sup>

Accused took away skull of deceased for concealing it within less than 3 hours of murder and not far from place of occurrence. Joinder of charges and joint trial was not illegal.<sup>3b</sup>

Where requisite knowledge and intention were not made out, conviction was set aside.<sup>3c</sup>

202. Intentional omission to give information of offence by person bound to inform. Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be



punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

203. Giving false information respecting an offence committed. Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation: In section 201 and 202 and in this section the word 'offence' includes any act committed at any place out of Pakistan, which if committed in Pakistan, would be punishable under any of following sections, namely 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

204. Destruction of document to prevent its production as evidence. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

205. False personation for purpose of act or proceeding in suit or prosecution. Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

206. Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution. Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or on satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

207. Fraudulent claim to property to prevent its seizure as forfeited or in execution. Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practices any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or on satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

208. Fraudulently suffering decree for sum not due. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### Illustration

A institutes a suit against Z. Z. knowing that A is likely to obtain a decree against him fraudulently suffers a judgment to pass against him for a larger amount at the suit of B. who has no just claim against him, in order that B. either on his own account or for the benefit of Z. may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

209. Dishonestly making false claim in Court. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

210. Fraudulently obtaining decree for sum not due. Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

211. False charge of offence made with intent to injure. Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceedings against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

212. Harbours offender. Whoever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment.

If a capital offence ; shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine,

If punishable with imprisonment for life, or with imprisonment, and if the offence is punishable with imprisonment for life or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

“Offence” in this section includes any act committed at any place out of Pakistan, which, if committed in Pakistan, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in Pakistan.

Exception: This provision shall extend to any case in which the harbour or concealment is by the husband or wife of the offender.

#### Illustration

A. knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to imprisonment for life. A is liable to imprisonment of either description for a term not exceeding three years and is also liable to fine.

213. Taking gift, etc., to screen an offender from punishment. Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment.

If a capital offence ; shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with imprisonment for life or with imprisonment ; and if the offence is punishable with imprisonment for life or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for offence, or with fine, or with both.

214. Offering gift or restoration of property in consideration of screening offender. Whoever gives or causes or offers or agrees to give or cause, any gratification to any person, or to restore or cause the restoration of any property to any person, in consideration of that person's

concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment;

if a capital offence ; shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punished with imprisonment for life, or with imprisonment ; and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Exception: The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.

Illustration. [Rep. by the Code of Criminal Procedure, 1882 (X of 1882)].

215. Taking gift to help to recover stolen property, etc. Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any movable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

216. Harbours offender who has escaped from custody or whose apprehension has been ordered. Whenever any person convicted of, or charged with an offence, being in lawful custody for that offence, escape from such custody.

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that it to say;

if a capital offence; if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; if the offence is punishable with imprisonment for life or imprisonment for ten years; he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence

for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence or with fine, or with both.

“Offence” in this section includes also any act or omission of which a person is alleged to have been guilty out of Pakistan which, if he had been guilty of it in Pakistan would have been punishable as an offence, and for which he is, under any law relating to extradition, 4[x x x] or otherwise, liable to be apprehended or detained in custody in Pakistan, and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in Pakistan.

Exemption: This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

216-A. Penalty for harbouring robbers or decoits. Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation: For the purpose of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without Pakistan.

Exception: This provision does not extend to the case in which the harbour is by the husband or wife of the offender.

216-B. Definition of “harbour” in sections 212, 216 and 216-A. [Omitted by the Penal Code (Amendment) Act, 1942 (VIII of 1942), S.3.]

217. Public servant disobeying direction of law with intent to save persons from punishment or property from forfeiture. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture. Whoever, being public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENTARY

Police officials can be convicted u/s. 218 on charge of preparing incorrect record or writing only if prosecution brings on record Mashirnama prepared by Police officials. Failure by prosecution to bring on record Mashirnama would entitle accused Police officials to acquittal of charge u/s. 218.5

219. Public servant in judicial proceeding corruptly making report, etc., contrary to law. Whoever being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, and report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

220. Commitment for trial or confinement by person having authority who knows that he is acting contrary to law. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

221. Intentional omission to apprehend on the part of public servant bound to apprehend. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say: —

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for an offence punishable with imprisonment for life or imprisonment for a term which may extend to ten years; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

222. Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence or lawfully committed to custody, intentionally omits to apprehend such person, or intentionally suffers such person to escape or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say: —

with imprisonment for life or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement of who ought to have been apprehended, is under sentence of death, or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject by a sentence, of a Court of Justice, or by virtue of a commutation of such sentence, to imprisonment for life or imprisonment for a term of ten years or upwards; or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years or if the person was lawfully committed to custody.

223. Escape from confinement or custody negligently suffered by public servant. Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence or lawfully committed to custody, negligently suffers such persons to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

#### COMMENTARY

Appreciation of evidence. Accused who was sitting inside the vehicle and was protected from all sides never fired a single shot at any of the assailants who had come to rescue the under-trial prisoners and were standing in the pen and in fact let them snatch not only the service rifle of one of the constables but also suffered the escape of the two under trial prisoners whom he was escorting. Conviction of accused was maintained in circumstances.<sup>7</sup>

Sentence, reduction in. Accused who had remained in custody for about five months had already been departmentally punished. Under-trial prisoners and the accused persons had since been arrested. Accused was also not in collusion with the assailants. Sentence of one year's S.I. awarded to accused was reduced to the term of imprisonment already undergone by him, in circumstances.<sup>8</sup>

224. Resistance or obstruction by a person to his lawful apprehension. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation: The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

225. Resistance or obstruction to lawful apprehension of another person. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence or rescues or attempts to rescue any other person from any custody in which that

person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with imprisonment for life, or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to imprisonment for life or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

225-A. Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise provided for. Whoever, being a public servant, legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in Section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

(a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine or with both; and

(b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

225-B. Resistance or obstruction to lawful apprehension or escape or rescue in cases not otherwise provided for. Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

226. Unlawful return from transportation. [Omitted by the Law Reforms Ordinance, XII of 1972.]



227. Violation of condition of remission of punishment. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

228. Intentional insult or interruption to public servant sitting in judicial proceeding. Whoever intentionally offers any insult or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

#### COMMENTARY

Contempt of Court. Power to punish contempt conferred by Sec. 480, Cr.P.C., is not exercisable by any person other than a person designated as a "Court" Revenue Officer (not a Court) cannot exercise such power.<sup>8b</sup>

Contempt of a Superior Court is not tried under Sec. 228 and is tried under inherent jurisdiction of Court.<sup>8c</sup>

Order requiring contemner to furnish surety bond for Rs. One lac and in case of failure to remain in prison would be an extraordinary order. Supreme Court setting aside such order and remanding case to Trial Court to pass an appropriate order.<sup>8a</sup>

229. Personation of a juror or assessor. Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned, empanelled or sworn as a jurymen or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

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#### CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

230. "Coin" defined. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.

Pakistan coin: Pakistan coin is metal stamped and issued by the authority of the Government of Pakistan in order to be used as money; and metal which has been so stamped and issued shall continue to be Pakistan coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.

#### Illustrations

(a) Cowries are not coin.

(b) Lumps of unstamped copper, though used as money are not coin.

(c) Medals are not coin, inasmuch as they are not intended to be used as money.

(d) [Omitted by Ord. XXVII of 1981].

(e) [Omitted by Ord. XXVII of 1981].

231. Counterfeiting coin. Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation: A person commits this offence who intending to practice deception, or knowing it to be likely that deception will thereby be practiced, causes a genuine coin to appear like a different coin.

232. Counterfeiting Pakistan coin. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting Pakistan coin, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

233. Making or selling instrument for counterfeiting coin. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

234. Making or selling instrument for counterfeiting Pakistan coin. Whoever makes or mends, or performs any part of the process of making or mending or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting Pakistan coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

235. Possession of instrument or the material for the purpose of using the same for counterfeiting coin. Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

If Pakistan coin; and if the coin to be counterfeited is Pakistan coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

236. Abetting in Pakistan the counterfeiting out of Pakistan of coin. Whoever, being within Pakistan, abets the counterfeiting of coin out of Pakistan shall be punished in the same manner as if he abetted the counterfeiting of such coin within Pakistan.

237. Import or export of counterfeit coin. Whoever imports into Pakistan, or exports therefrom, any counterfeit coin, knowingly or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

238. Import or export of counterfeits of Pakistan coin. Whoever imports into Pakistan, or exports therefrom, and counterfeit coin which he knows or has reason to believe to be a counterfeit of Pakistan coin, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

239. Delivery of coin, possessed with knowledge that it is counterfeit. Whoever, having any counterfeit coin, which at the time when he became possessed of it he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

240. Delivery of Pakistan coin possessed with knowledge that it is counterfeit. Whoever, having any counterfeit coin, which is a counterfeit of Pakistan coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of Pakistan coin, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

241. Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

#### Illustration

A, a coiner, delivers counterfeit 9[x x x x] rupees to his accomplice B, for the purpose of uttering them, B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

242. Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

243. Possession of Pakistan coin by person who know it to be counterfeit when he became possessed thereof. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of Pakistan coin, having known at the time

when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

244. Person employed in mint causing coin to be of different weight or composition for that fixed by law. Whoever being employed in any mint lawfully established in Pakistan, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

245. Unlawfully taking coining instrument from mint. Whoever, without lawful authority, takes out of any mint, lawfully established in Pakistan, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

246. Fraudulently or dishonestly diminishing weight or altering composition of coin. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation. A person who scoops out part of the coin and puts anything else into the cavity alters the composition of that coin.

247. Fraudulently or dishonestly diminishing weight or altering composition of Pakistan coin. Whoever fraudulently or dishonestly performs on any Pakistan coin, any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

248. Altering appearance of coin with intent that it shall pass as coin of different description. Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

249. Altering appearance of Pakistan coin with intent that it shall pass as coin of different description. Whoever performs on any Pakistan coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

250. Delivery of coin, possessed with knowledge that it is altered. Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

251. Delivery of Pakistan coin possessed with knowledge that it is altered. Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

252. Possession of coin by person who knew it to be altered when he became possessed thereof. Whoever fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the section 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

253. Possession of Pakistan coin by person who knew it to be altered when he became possessed thereof. Whoever fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of section 247 or 249 has been committed having known at the time of becoming possessed thereof, that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

254. Delivery of coin as genuine which when first possessed, the deliver did not know to be altered. Whoever delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in section 246, 247, 248 or 249 has been performed, but in respect of which he did not at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

255. Counterfeiting Government stamp. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation. A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

256. Having possession of instrument or material for counterfeiting Government stamp. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

257. Making or selling instrument for counterfeiting Government stamp. Whoever makes or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

258. Sale of counterfeit Government stamp. Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. s

259. Having possession of Counterfeit Government stamp. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

260. Using as genuine a Government stamp known to be counterfeit. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

261. Effacing writing from substance bearing Government stamps, or removing from document a stamp used for it, with intent to cause loss to Government. Whoever, fraudulently or with intent to cause loss to the Government, removes or effaces from any substance bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description of a term which may extend to three years, or with fine, or with both.

262. Using Government stamp known to have been before used. Whoever fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

263. Erasure of mark denoting that stamp has been used. Whoever, fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark, put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession or sells or disposes of any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

263-A. Prohibition of fictitious stamps. (1) Whoever: —

(a) makes, knowingly alters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or

(b) has in his possession, without lawful excuse, any fictitious stamp, or

(c) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument or materials in the possession of any fictitious stamp may be seized and shall be forfeited.

(3) In this section "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for the purpose.

(4) In this section and also in Sections 255 to 283, both inclusive, the word "Government" when used in connection with, or in reference to any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in Section 17, be deemed to include the person or persons authorized by law to administer executive Government in any part of Pakistan, and also 1[x x x] in any foreign country.

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### CHAPTER XIII OF OFFENCES RELATING TO WEIGHTS AND MEASURES

264. Fraudulent use of false instrument for weighing. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

265. Fraudulent use of false weight or measure. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

266. Being in possession of false weight or measure. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

267. Making or selling false weight or measure. Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be

used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

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## CHAPTER XIV

### OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS

268. Public nuisance. A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

269. Negligent act likely to spread infection of disease dangerous to life. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

270. Malignant act likely to spread infection of disease dangerous to life. Whoever maliciously does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

271. Disobedience to quarantine rule. Whoever knowingly disobeys any rule made and promulgated by the Central or any Provincial Government for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

272. Adulteration of food or drink intended for sale. Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

273. Sale of noxious food or drink. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.



274. Adulteration of drugs. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

275. Sale of adulterated drugs. Whoever, knowing any drug or medial preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

276. Sale of drug as a different drug or preparation. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medicinal preparation, as a different drug medicinal preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

277. Fouling water of public spring or reservoir. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purposes for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

278. Making atmosphere noxious to health. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

279. Rash driving or riding on a public way. Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to 2[two years] or with fine which may extend to one thousand rupees, or with both.

#### COMMENTARY

Simultaneous conviction. Where rash or negligent driving actually results in grievous hurt caused to another person, the offender would be liable either under S. 279, P.P.C. or under S. 338, P.P.C. but he cannot be legally convicted and sentenced both under Ss. 279 and 338, P.P.C. simultaneously.<sup>3</sup>

Appreciation of evidence. Injured prosecution witnesses were not guilty of contributory negligence in the accident. Accused was proved to have caused grievous injuries to the witnesses due to his rash and negligent driving and imposition of separate sentences both under Ss. 279 and 338, P.P.C. therefore, not justified. Conviction and sentence of accused

under S. 279, P.P.C. were consequently set aside and his conviction under Ss. 338/427, P.P.C. was maintained with reduction in his sentence thereunder.<sup>4</sup>

280. Rash navigation of vessel. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

281. Exhibition of false light, mark or buoy. Whoever exhibits any false light, mark or buoy intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

282. Conveying person by water for hire in unsafe or overloaded vessel. Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

283. Danger or obstruction in public way or line of navigation. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

284. Negligent conduct with respect to poisonous substance. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person.

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance.

Shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, which may extend to one thousand rupees, or with both.

285. Negligent conduct with respect to fire or combustible matter. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

286. Negligent conduct with respect to explosive substance. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

287. Negligent conduct with respect to machinery. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

288. Negligent conduct with respect to pulling down or repairing buildings. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

289. Negligent conduct with respect to animal. Whoever, knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

290. Punishment for public nuisance in cases not otherwise provided for. Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

291. Continuance of nuisance after injunction to discontinue. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

292. Sale, etc., of obscene books, etc. Whoever—

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produce or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatever, or

(b) imports, exports or conveys any obscene object of any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section,

[shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Exception. This section does not extend to any book, pamphlet, writing, drawing or painting kept or used bona fide for religious purposes or any representation sculptured, engraved, painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

293. Sale, etc., of obscene objects to young person. Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

294. Obscene acts and songs. Whoever, to the annoyance of others,

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene songs, ballads or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

294-A. Keeping lottery office. Whoever keeps any office or place for the purpose of drawing any lottery not being a State lottery or a lottery authorized by the Provincial Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.

## COMMENTARY

Lottery. Section 294-A, P.P.C. insofar as it exempts "State Lottery or a lottery authorized by the Provincial Government" is repugnant to the Injunctions of Islam. Shariat Appellate Bench observed that necessary steps be taken by 30th June, 1992 to give effect to the decision failing which the said provision shall cease to have effect.<sup>4a</sup>

5[294-B. Offering of prize in connection with trade, etc. Whoever offers or undertakes to offer, in connection with any trade or business or sale of any commodity, any prize, reward or other similar consideration, by whatever name called, whether in money or kind, against any coupon, ticket, number of figure, or any other device, as an inducement or encouragement to trade or business or to the buying of any commodity, or for the purpose of advertisement or popularizing any commodity, and whoever publishes any such offer, shall be punishable with imprisonment of either description for a term which may extend to six months, or with fine, or with both.]

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## CHAPTER XV

### OF OFFENCES RELATING TO RELIGION

295. Injuring or defiling place of worship, with intent to insult the religion of any class. Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

295-A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religions beliefs. Whoever, with deliberate and malicious intention of outraging the religious feelings, of any class of the citizens of Pakistan, by words, either spoken or written, or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to 6[ten years], or with fine, or with both.

7[295-B. Defiling etc. of copy of Holy Qur'an. Whoever willfully defiles, damages or desecrates a copy of the Holy Qur'an or of an extract be punishable with imprisonment for life].

## COMMENTARY

Act of defiling or desecrating if done consciously and deliberately with or without the intention to damage and destroy the honour, respect and greatness of a person in the eye of public in general or with the purpose to satisfy one's own feelings shall be a willful act bringing the case within the purview of S. 295-B, P.P.C.<sup>8</sup>

Appraisal of evidence. Defilement. Prosecution witnesses traveling in the bus were strangers to the accused having no reason to level false allegations against him. Accused had been taken into custody in the bus when he was uttering derogatory language for the Holy Qur'an and

produced a copy of it from the bag with a pair of shoes placed by him in his feet in the bus. Accused had been proved to be mentally fit and was apprehended on the spot with the recovered articles. Prosecution witnesses were truthful and inspired confidence. Conviction and sentence of accused were upheld in circumstances.<sup>9</sup>

(i) Keeping copy of Holy Quran in a bag with a pair of shoes and that too in the feet would be defilement of Holy Quran punishable u/s. 295(B). Defilement would be presumed and proved when it was done voluntarily without lawful excuse. In such case, it would not be necessary for prosecution to prove that accused acted willfully.

(ii) Physical dishonour of Holy Quran would constitute offence u/s. 295B. Word "defile" in S. 295B is not confined to spiritual disrespect but also includes physical disrespect like placing Holy Quran with pair of shoes.<sup>1</sup>

Defilement. Disrespect, if willful, shall be covered by the definition of "defilement" constituting an offence under S. 295-B, P.P.C.<sup>2</sup>

Intent of S. 295-B, P.P.C. Physical respect of the Holy Qur'an and spiritual feelings with its teachings cannot be separated from each other.<sup>3</sup>

"Spiritual respect" and "physical respect". Distinction. Spiritual respect is a matter of understanding of an individual with reference to his knowledge and wisdom which is not common, but to show physical respect and honour to the Holy Qur'an is a legal, religious and moral duty of person. Spiritual respect and honour is a matter of an individual relating to his thinking whereas physical honour and respect is a matter of his visible action.<sup>4</sup>

Word "defiles" as used in S. 295-B, P.P.C. Meaning, import and extent of its application.<sup>5</sup>

Words "willfully defiles" occurring in S. 295-B, P.P.C. Meaning.<sup>6</sup>

7[295-C. Use of derogatory remarks, etc., in respect of the Holy Prophet. Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (Peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.

## COMMENTARY

Printing of Darood on Marriage Invitation Cards by Qadiani. Assertion that Darood on Marriage Invitation Cards was meant for Mirza Ghulam Ahmed not controverted by Qadiani. Held: There were reasonable grounds for believing that accused Qadianis had committed offence u/s. 295C which fell within prohibitory clause of S. 497 disentitling accused Qadianis to bail.<sup>8</sup>

296. Disturbing religious assembly. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

297. Trespassing on burial places, etc. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby,

commits any trespass in any place of worship or on any place of sculpture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse or causes disturbance to any persons assembled for the performance of funeral ceremonies,  
shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

298. Uttering words, etc., with deliberate intent to wound religious feelings. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

9[298-A. Use of derogatory remarks, etc., in respect of holy personages. Whoever by words, either spoken or written, or by visible representation, or by an imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of any wife (Ummul Mumineen), or members of the family (Ahle-bait), of the Holy Prophet (Peace be upon him), or any of the righteous Caliphs (Khulafa-e-Rashideen) or companions (Sahaaba) of the Holy Prophet (Peace be upon him) shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.]

1[298-B. Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places. (1) Any person of the Qadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name) who by words, either spoken or written, or by visible representation;

(a) refers to, or addresses, any person, other than a Caliph or companion of the Holy Prophet Muhammad (Peace be upon him), as "Ameer-ul-Mummineen", Khalifa-tul-Mummineen", Khalifa-tul-Muslimeen, "Sahaabi" or "Razi Allah Anho";

(b) refers to, or addresses, any person, other than a wife of the Holy Prophet Muhammad (Peace be upon him), as "Ummul-Mummineen";

(c) refers to, or addresses, any person, other than a member of the family (Ahle-bait) of the Holy Prophet Muhammad (Peace be upon him), as "Ahle-bait"; or

(d) refers to, or names, or calls, his place of worship as "Masjid";

shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

(2) Any person of the Qadiani group or Lahori group (who call themselves "Ahmadis" or by any other name) who by words, either spoken or written, or by visible representation, refers to

the mode or from of call to prayers followed by his faith as "Azan", or refers Azan, as used by the Muslims, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

## COMMENTARY

Anti-Islamic activities of the Qadiani Group, ahore Group and Ahmadis Prohibition and Punishment) Ordinance (XX of 1984), S. 3. Constitution of Pakistan, 1973, Art. 260(3). Epithets, descriptions and titles etc. as given in S. 298-B, P.P.C. carry special meaning, are part of the Muslim belief and used for reverence. Any person using such epithets, descriptions and titles for others, in the same manner, may be conveying impression to others that they are concerned with Islam when the fact may be otherwise. Ahmadis being non-Muslims, legally and Constitutionally were of their own choice, a minority opposed to Muslims and had no right to use the epithets etc. and the "Shaarie Islam" which were exclusive to Muslims and Ahmadis had been rightly denied the use of such epithets by law.<sup>1a</sup>

Masjid. Deception. If the structure of the building used by Qadianis as their place of worship resembles with that of a Muslim mosque, Qur'anic verses are inscribed on its walls or atop the arches and additionally prayers are offered in the manner of Muslims then Muslims are likely to be misled. Possibility of deception to Muslims, therefore, exists even if Qadianis do not conceal the identity of their place of worship. Fact that, to avoid deception, words " ." had been written over the main entrance of the disputed building, would not altogether obviate possibility of deception to Muslims because illiterate persons could not read the said words and yet others may not either notice the same or understand the true import of words so written. Very construction of the disputed building like a Muslim mosque, prima facie, makes out the offence in circumstances. [Muhammad Aslam v. The State (1998 PCrLJ 522 dissented from)].<sup>2</sup>

Masjid. Sacred institution of Muslims. Deception. If a building is constructed according to the common and familiar design of a Masjid, and persons, congregate and pray in the manner of Muslims then it can be thought that they are Muslims. Qadianis, in order to avoid deception to Muslim community, are prohibited under S. 298-B, P.P.C. from misusing certain epithets reserved for the highly reverend personages, announcing call for prayers through Azans or calling their place of a worship a mosque or Masjid.<sup>3</sup>

298-C. Person of Qadiani group, etc., calling himself a Muslim or preaching or propagating his faith. Any person of the Qadiani group or the Lahori group (who call themselves "Ahmadis" or by any other name), who directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either written or spoken, or by visible representation, or in any manner whatsoever outrages the religious feelings of Muslims, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine].

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## CHAPTER XVI

### OF OFFENCES AFFECTING THE HUMAN BODY



## Of Offences Affecting Life

4[299. Definitions. — In this Chapter, unless there is anything repugnant in the subject or context, —

- (a) "adult" means a person who has attained the age of eighteen years;
- (b) "arsh" means the compensation specified in this Chapter to be paid to the victim or his heirs under this Chapter;
- (c) "Authorised medical officer" means a medical officer or a Medical Board, howsoever designated, authorized by the Provincial Government;
- (d) "Daman" means the compensation determined by the Court to be paid by the offender to the victim for causing hurt not liable to Arsh ( );
- (e) "diyat" means the compensation specified in Section 323 payable to the heirs of the victim;
- (f) "Government" means the Provincial Government;
- (g) "ikrah-i-tam" means putting any person, his spouse or any of his blood relations within the prohibited degree of marriage in fear of instant death, or instant permanent impairing of any organ of the body or instant fear of being subjected to sodomy or zina-bil-jabr;
- (h) "ikrah-i-naqis" means any form of duress which does not amount to Ikrah-i-Tam;
- (i) "minor" means a person who is not an adult;
- (j) "qatl" means causing death of a person;
- (k) "qisas" means punishment by causing similar hurt at the same part of the body of the convict as he has caused to the victim or by causing his death if he has committed qatl-i-amd in exercise of the right of the victim or a wali;
- (l) "tazir" means punishment other than qisas , diyat, arsh or daman; and
- (m) "wali" means a person entitled to claim qisas.

300. Qatl-i-Amd. — Whoever, with the intention of causing death or with the intention of causing bodily injury to a person, doing an act which in the ordinary course of nature is likely to cause death, or with the knowledge that his act is so imminently dangerous that it must in all probability cause death, causes the death of such person, is said to commit qatl-i-amd.

## COMMENTARY

Accused would be exceeding exercise of right of private defence when they caused injuries to deceased and P.Ws. who were not armed with lethal weapons. Trial Court would in such case

would be correct in its conclusion that accused had exceeded their right of private defence. Conviction/sentence recorded under S. 304-I upheld by High Court as unexceptionable.<sup>5</sup>

“Free fight” and “sudden fight”. Broad principles governing cases falling in the categories of “free fight” and “sudden fight”. Distinguishing features.<sup>6</sup>

Trial Court had convicted petitioner under S. 304, Part I, P.P.C. in view of finding that it was a sudden fight without premeditation and had sentenced him to imprisonment for life with fine. Appeal of petitioner was dismissed by High Court on the ground that he exceeded the right of self-defence and thus was rightly convicted. Supreme Court dismissed petitioner for leave to appeal against conviction observing that petitioner’s case fell within the scope of Exception 4 to S. 300, P.P.C. and his conviction under S. 304, Part I, P.P.C. was fully justified.<sup>7</sup>

Benefit of provocation which is sudden but not gone within meaning of Exception IV, should be extended to accused by awarding him lesser sentence u/s. 302.<sup>8</sup>

Appeal to Supreme Court against conviction/sentence of life imprisonment awarded by Trial Court was upheld by High Court. Supreme Court holding that defence plea of grave and sudden provocation was plausible in circumstances of case and converting conviction/sentence u/ss. 302/34 into conviction/sentence u/ss. 304-I/34.<sup>9</sup>

Exceeding right of self-defence. Finding concurrently recorded by Trial Court and High Court, with conviction/sentence u/s. 304-I. Held: Finding was unexceptionable and did not merit interference by Supreme Court.<sup>1</sup>

301. Causing death of person other than the person whose death was intended. — Where a person, by doing anything which he intends or knows to be likely to cause death, causes death of any person whose death he neither intends nor knows himself to be likely to cause, such an act committed by the offender shall be liable for qatl-i-amd.

302. Punishment of qatl-i-amd. — Whoever commits qatl-e-amd shall be subject to the provisions of this Chapter be:—

(a) punished with death as qisas:

(b) punished with death for imprisonment for life as ta’zir having regard to the facts and circumstances of the case, if the proof in either of the forms specified in section 304 is not available; or

(c) punished with imprisonment of either description for a term which may extend to twenty-five years, where according to the Injunctions of Islam the punishment of qisas is not applicable.

#### COMMENTARY

Appreciation of evidence — Conflict between ocular testimony and medical evidence — Effect — When the Court is convinced that a witness has seen the incident and his statement is worthy

of credence, the conflicting opinion of the doctor would neither negate nor outweigh nor nullify the evidentiary value of such statement.<sup>2</sup>

Motive — Finding by Trial Court and High Court that prosecution had proved motive for murder would not be interfered with by Supreme Court.

Lack of motive has not been accepted by Supreme Court as a mitigating circumstance. However, when one or two motives are set up and the prosecution witnesses are wavering and jump from one motive to another, it would assume the nature of mitigating circumstance entitling convict to reduction of death sentence into life imprisonment.<sup>2a</sup>

Motive Sentence. Accused would be awarded normal death sentence even if motive is weak, but prosecution has established the guilt of accused beyond reasonable doubt. <sup>2b</sup>

S. 302(c). In cases of premeditated and cold blooded murder, no body is allowed to take law in his own hand in the name of so-called ghairat or siah kari or karo kari. This is not only against Injunctions of Islam but also against law and Constitution. Illegal century old customary practice of ghairat, siah kari and karo kari cannot be preferred over the dictates of Allah as revealed in Surah Al-Noor, Hadith of Holy Prophet (PBUH) and the Constitution. Life cannot be taken away in Islam or law only basis of mere accusation or rumours or otherwise of siah kari which has nothing to do with teachings of Islam. <sup>2c</sup>

Objection as to jurisdiction at appellate stage — Validity — Even if the High Court had no jurisdiction to hear the appeal, the accused could not be permitted to raise such an objection at late stage on account of the principle of estoppel which would operate against him because of his acquiescence or silence and particularly when otherwise the Trial Court and the High Court as such did not lack jurisdiction in the matter — Effort to nullify all the proceedings on account of some defect in the charge which had not prejudiced the accused but had rather benefited him, could not succeed which merely proceeded on technicality and not to advance the ends of justice — High Court had brought on record in a legal way the evidence which existed on record but could not be exhibited and made admissible on account of negligence of the Trial Court and such exercise by High Court having advanced the cause of justice was not open to any exception — Delay in recording the statements of eye-witnesses under S. 161, Cr.P.C. was due to the negligence/lapse of the police officers who despite their availability had failed to record their statements — Charge against the accused of having effectively fired at the deceased had been proved by the consistent statements of all the eye-witnesses supported by the medical evidence as well as by the abscondence of accused for more than three years despite his knowledge about the case against him — Appeal of accused was dismissed in circumstances. <sup>2d</sup>

Appraisal of evidence — Occurrence was of day time — F.I.R. was promptly lodged — Eye-witnesses were natural witnesses of the occurrence and their statements inspired confidence — Medical evidence was fully supported by ocular testimony which had established the presence of eye-witnesses in the car at the time of incident — Non-recovery of weapons of offence did not create any doubt in the prosecution version as the accused had remained at large for about one month and they could destroy the same — High Court had rightly agreed with conclusion of the Trial Court — Appeal was dismissed in circumstances.<sup>2e</sup>

High Court had rightly altered the sentence of death of one accused to imprisonment for life in view of the suppression of injury to a lady from accused side by the prosecution — Reasons

advanced by High Court regarding the decision taken about the other two co-accused were also cogent and were not open to any exception — Leave to appeal was refused to the complainant by Supreme Court accordingly.2f

Sentence — Where a case is proved against the culprit beyond reasonable shadow of doubt and offence under s. 302, P.P.C. is established, the normal penalty of death should be awarded and leniency in any case should not be shown, except where strong mitigating circumstances for lesser sentence could be gathered from the evidence available on record.2g

Appraisal of evidence — Incident had taken place during day time — F.I.R. was promptly lodged — Specific role of causing “Chhuri” blows to the deceased was attributed to the accused — chemical Examiner’s report about the blood-stained “Chhuri” recovered from the accused was positive and the blood on the “Chhuri” and secured from the “Wardat” was of human nature according to the report of the Serologist — Ocular account was natural, convincing and trustworthy — Prosecution witnesses, no doubt, were related to the deceased, but had no previous enmity or ill-will against the accused, so that real culprits might be let off and in their place other persons might be substituted — Courts below had very properly considered and appreciated the evidence — Fatal injury having been attributed to accused, he had rightly been convicted and sentenced to death— There being no misreading or non-reading of evidence, impugned judgment was not open to exception — Appeal was dismissed accordingly.2h

Appraisal of evidence — Occurrence had taken place in broad daylight and the accused had been squarely charged in the promptly lodged F.I.R. for killing the five deceased by effective firing made from Kalashnikovs — Accused being known to the deceased possibility of mistaken identity stood ruled out — Ocular testimony was amply corroborated by promptly lodged F.I.R., the motive and the medical evidence — Eye-witnesses had given a straightforward and consistent account of occurrence who were not prompted by any oblique motive to falsely implicate the accused in the case — Close relationship of prosecution witnesses with the deceased and background of enmity between them did not justify rejection of their testimony which was corroborated by the abovementioned confirmatory pieces of evidence — One eye-witness was an independent witness as he was neither related to any deceased nor inimical towards any accused — Promptitude with which the F.I.R. was lodged had established the presence of eye-witnesses on the spot at the time of occurrence and they were, thus, natural and not chance witnesses — No mitigating circumstance for awarding lesser penalty was present on record — Appeal of accused was dismissed in circumstances.2i

Appeal against acquittal of accused by High Court — F.I.R. had been lodged very promptly — Specific role of effective firing by repeater gun at the deceased was attributed to accused — Incident was of day time — Ocular evidence was natural, convincing, trustworthy and reliable and was supported by medical evidence — Prosecution witnesses had no ill-will, malice or enmity against the accused for his false implication in the case — Acquittal of accused by High Court had caused miscarriage of justice and was not sustainable — Impugned judgment qua the acquittal of accused based on conjectures and surmises was consequently set aside and his conviction under S-302, P.P.C. and sentence of imprisonment for life with fine awarded by Trial Court were restored.2j

Case would not be a fit case for imposing extreme penalty of death when accused was obsessed with idea of avenging murder of his mother, which is not a rare phenomenon, and his

obsession was aggravated by influence of his father and other brother. Supreme Court in such case maintaining conviction under S. 302 but reducing death sentence to life imprisonment with benefit of S. 382B, Cr. P. C.3

Prosecution case under S. 302 would stand proved beyond any reasonable doubt when ocular evidence qua accused is worthy of credence having been corroborated by established motive and independent evidence of unimpeachable integrity in shape of recovery of incriminating articles and positive report of Firearms expert.4

Circumstance that prosecution failed to show immediate cause of murder would be no justification for not awarding death sentence when occurrence was pre-meditated and deceased was murdered cold-bloodedly under a preconceived strategy. Supreme Court in such case setting aside judgment of High Court altering death sentence into life imprisonment and restoring death sentence awarded to convict by Trial Court.5

Appreciation of evidence. F.I.R. was delayed by about nine hours, but no explanation was put forth by the complainant for the delay. Prosecution witnesses were near relatives of the complainant and were interested. Testimony of said witnesses was not credible to carry conviction of the accused in such heinous offence especially when their interested and inimical evidence was not corroborated by any circumstantial evidence. Ocular evidence was in conflict with medical evidence. Empties allegedly taken in possession from the scene of offence had neither been sent to the expert nor any relevant-report was produced by the prosecution. Incident was unseen and story was built up after due deliberation and consultation and presence of alleged eye-witnesses was doubtful. Motive of occurrence was not proved positively by examining any evidence in that context. Weapon from which the empties were discharged was not recovered and empties taken from the Wardat did not render any corroboration. Prosecution having failed to prove the case against the accused, conviction and sentence awarded to accused, were set aside, in circumstances.6

Appreciation of evidence. Presence of eye-witnesses on the scene of occurrence was natural. Ocular testimony inspired confidence which was in absolute accord with medical evidence and was further corroborated by the evidence of recovery. Gun recovered from the accused was found wedded with the crime empties secured from the spot. Recovery of the motorcycle from the place of incident being driven by the accused and abandoned there had also a corroborative value. No mitigating circumstance was available on record for awarding lesser punishment to accused. Conviction and sentence of death awarded to each accused were confirmed in circumstances.7

Appreciation of evidence. Parties had deep-seated enmity and prosecution witnesses were highly inimical towards the accused. Enmity cuts both ways as the same would provide motive for the accused to commit offence, and also false implication by the complainant could not be ruled out. Recovery of three empties was of no use because weapon of offence was not recovered from the accused. Prosecution witnesses could not point out as to who fired first and the only mention made was all the three accused fired. Non-mentioning of seat of injuries on person of deceased and the sequence in which the firing took place had confined absence of prosecution witness at the spot at the time when the deceased was done to death. Investigating Officer had stated that during his investigation no worthwhile evidence was found to be connecting the accused with commission of offence. Where in a case of murder question

of life and death was involved, required a very close scrutiny of evidence when the case was bristling with previous enmity between the parties and except the statements of prosecution witnesses there was no corroborative evidence available. Nominating totally innocent persons and changing the stance subsequently had made the case of prosecution doubtful and benefit of doubt should go to the accused. Prosecution having failed to prove the case against the accused, conviction and sentence awarded to them were set aside and they were acquitted.<sup>8</sup>

Appreciation of evidence. Motive for the occurrence was fully proved against the accused. F.I.R. was promptly lodged and was supported by eye-witnesses. Complainant had been corroborated by a totally independent eye-witness who had no motive to falsely implicate the accused in the case. Ocular testimony was corroborated by medical evidence. Recovery of the carbine from the "Baithak" of accused had also proved his involvement in the murder of the deceased. Non-production of injured prosecution witnesses at the trial could not lead to an adverse inference against the prosecution as they had been won over by the accused. Police opinion regarding innocence of the accused was not binding on the Court, particularly so when the motive, ocular testimony and medical evidence had proved his guilt. Conviction and sentence of death awarded to the accused by Trial Court were affirmed in circumstances.<sup>9</sup>

Appreciation of evidence. Occurrence had taken place in daylight at 8-30 a.m. in the house of the complainant. F.I.R. had been lodged promptly on the same day without any consultation or deliberation. Motive as alleged for the occurrence was admitted by the parties. Accused had admitted the occurrence, but the plea taken by him in his defence was neither taken during investigation nor the same was substantiated at the trial by evidence. Accused also did not get himself medically examined prior to his arrest. Eye-witnesses being inmates of the house were natural witnesses of the occurrence and their testimony could not be discarded due to their relationship inter se. Weapon of offence recovered at the instance of accused had matched with the crime empties secured from the place of incident. Ocular account of occurrence was corroborated by medical evidence, recovery of weapon of offence and motive. Accused had taken the lives of two innocent persons and deserved no leniency. No mitigating circumstance was available on record for grant of lesser punishment. Conviction and sentence of death awarded to accused by Trial Court were confirmed in circumstances.<sup>10</sup>

Prosecution would succeed in bringing guilt home to accused when there is direct ocular evidence duly corroborated by a variety of circumstantial evidence. As such, the conclusion of Trial Court regarding guilt of accused would be correct and would not suffer from any legal or factual infirmity. High Court in such case affirming conviction with sentence of life imprisonment recorded by Trial Court against accused.<sup>1</sup>

Fact that motive for murder was not satisfactorily established would be a mitigating circumstance entitling accused to lesser sentence of life imprisonment. High Court in such case upholding lesser sentence and dismissing complainant's revision seeking enhancement of sentence of life imprisonment to death sentence.<sup>2</sup>

Offence under S. 302 is compoundable under S. 345, CrPC with permission of Court. High Court accepting such compromise and order acquittal of convict after setting aside conviction and sentence of life imprisonment recorded against him.<sup>3</sup>

Acquittal of accused for offence under S. 302 and acquittal of accused for offence under S. 324 recorded by Trial Court. High Court on appeal against acquittal recorded by Trial Court was

incorrect. High Court setting aside acquittals, convicting one accused under S. 302 with sentence of life plus compensation imprisonment and convicting other accused under S. 324 with sentence of seven years' R.I.4

Murder, offence of. Conviction and sentence for. Appeal against. Appreciation of evidence. Medical jurisprudence. Medico-legal report. Ocular account of occurrence. It is alleged in F.I.R. that three accused persons fired at the deceased but post-mortem examination report indicates only injury. It cannot be said with certainty that whose fire hit the deceased. Co-accused after receiving ten fire-arm injuries and some of them on vital parts of body was not in a position to give any statement. Definite facts about time between injury and death cannot be ascertained. If a bullet is fired with a rifle it would be of high velocity and if a bullet is fired from pistol or revolver it would be of low velocity. As there were not burning around that edges of the wound so it cannot be said that bullet was fired from a distance of more than 5 feet. No metallic body was recovered from dead-body of deceased. No identification parade was held in this case as required under law. Moreover, no public witness was either cited as an eye-witness or recovery witness. Not a single empty cartridge was taken from spot even there was exchange of a firing. Pistol with four empty cartridge was taken from spot even there was exchange of a firing. Pistol with four empty cartridges were recovered from co-accused but were not sent to fire-arm expert for determination whether these empty cartridges were fired from the said Pistol or not. It has come on record that there was wind storm at time of occurrence and lights were off. Held: Identification parade necessary. Prosecution story is most unnatural and improbable. Ocular account furnished by prosecution is not corroborated by any other independent source either in shape of motive or in shape of recovery of any incriminating evidence against appellant. Benefit of doubt extended to appellant. Appeal accepted and appellant is released forthwith if not required in any other case.5-8

Appreciation of evidence. Interested witness. Testimony of an interested witness can legally sustain conviction if found free from doubt.9

Sentence. Mitigating circumstances. Record did not show as to which of the two accused had fired the fatal shot. Accused were in the condemned cell for the last six years. Sentence of death awarded of accused was already to imprisonment for life in circumstances.1

Appraisal of evidence. Articles recovered from the accused had fully established their identity. Recovery to the car of the deceased from the accused, ownership of which he never claimed, had been proved by convincing and reliable evidence. Evidence of last seen furnished by the prosecution witnesses including the complainant who had seen the accused taking away the deceased alongwith them with his Taxi on the pretext of hiring the same, was not one believable but reliable also. Recovery of pistol at the instance of accused loaded with five live cartridges and one empty and medical evidence showing the deceased to have suffered only one fire shot, had corroborated the last seen evidence connecting the accused with the commission of the offence. Convictions of accused were upheld in circumstances with reduction in their sentences.2

Appreciation of evidence. Accused had not caused any harm to the deceased and the post murder role attributed to her appeared to be one of a house wife who had been acting mechanically under the command of her husband (co-accused). Retracted judicial confession of accused did not seem to be voluntary and she being under the thumb of her husband as well as

that of police, the same suffered from inherent infirmity and was not corroborated in material particulars even by the confessional statement of her husband. Recoveries of arms and ammunition allegedly belonging to the deceased had been made after a week of accused's arrest without associating any witness from the public and from an open place over which she had no control. Accused was acquitted in circumstances.<sup>3</sup>

Court has no authority to convict/sentence accused u/s. 302 where it is established that Qatl-i-Amd has been committed by husband of his wife leaving behind two sons who are alive.<sup>4</sup>

Appeal against death sentence after conviction u/s. 302 recorded by Trial Court. High Court reaching conclusion that prosecution had very badly failed to establish guilt of accused beyond reasonable doubt. High Court accepting appeal, setting aside conviction/death sentence and ordering acquittal.<sup>5</sup>

Conviction and sentence of life imprisonment recorded by Trial Court would not be justified when accused had acted out of Ghairat and had murdered his wife.<sup>6</sup>

Accused who acts under Ghairat deserves to be dealt from an angle different from one in which normal criminal acts are treated. In such cases, smaller sentence of 305 years would meet the ends of justice.<sup>7</sup>

Appeal against conviction with sentence of life imprisonment recorded by Trial Court. High Court finding that appellant had committed murder of his wife out Ghairat. High Court giving benefit of plea of Ghairat to appellant and altering conviction u/s. 302(b) to conviction u/s. 302(c) with alteration of sentence of life imprisonment to sentence of 5 years' R.I. alongwith benefit of S. 382B, Cr.P.C.<sup>8</sup>

Convict who has not taken definite plea to the effect that he committed murder of his wife out of Ghairat, would be entitled to plea of Ghairat when he had candidly stated in his statement u/s. 342 that on fateful day, both, his wife and her paramour were found together.<sup>9</sup>

Simpliciter denial by accused of allegations of murder would not justify brushing aside overwhelming prosecution evidence in form of ocular evidence, recovery evidence and dying declaration. It was held that accused was rightly found guilty of offence of murder and was rightly convicted.<sup>1</sup>

Death penalty would not be called for when prosecution did not allege any specific motive for commission of murder. In such case, reduction of death sentence to life imprisonment on appeal against conviction/sentence upheld by Supreme Court.<sup>2</sup>

Fact that eye-witnesses stood the test of lengthy cross-examination unshaken and unshattered would establish the fact that murder occurrence took place in the manner as alleged by prosecution and not as suggested by defence.<sup>3</sup>

Mere fact that injuries on person of deceased were not explained would not damage prosecution case when eye-witnesses are natural, constant and credit-worthy.<sup>4</sup>



Appreciation of evidence. Related or interested witnesses, credibility of. Neither the relationship of the witnesses with the deceased nor that of the prosecution witnesses inter se, nor in the appropriate cases even their being the interested witnesses, provided an ultimate guidance for according credence to their testimony. Inherent worth of evidence of a witness ultimately determines his reliability.<sup>5</sup>

Murdering a person to maintain dignity and honour of accused's family or tribe, would be no ground for lesser penalty.<sup>6</sup>

Leave to appeal was granted to accused to examine whether the acquittal of co-accused on the same evidence did not react adversely on the whole prosecution case and whether in the form of motive and the number of injuries attributed to the accused a case for mitigation in the sentence of death was not made out.<sup>7</sup>

Sentence. Leave to appeal was granted to consider whether it was a fit case for awarding the penalty of death.<sup>8</sup>

Leave to appeal was granted to the accused on having noticed many crucial discrepancies and infirmities in the prosecution case, which were amply borne out from the record.<sup>9</sup>

Testimony of eye-witnesses, who were closely related to the deceased and were somehow interested witnesses, had received ample support from the statement of a Police Constable who alongwith a Head Constable had apprehended the accused with the pistol (crime weapon) from near the place of occurrence. Two empties recovered from the spot which, on examination by the Forensic Science Laboratory, had matched with the crime weapon, had also corroborated the ocular testimony. Eye-witnesses had, therefore, been rightly held as worthy of reliance by the Courts below and the impugned judgment did not suffer from any infirmity whatsoever. Leave to appeal was consequently declined to accused by Supreme Court.<sup>10</sup>

Contention of accused was that statements of the only two eye-witnesses were recorded by the police after a delay of about five months after the date of occurrence; judicial confessions were shown to have been made by the accused persons but admittedly same were recorded ten days after the arrest of accused persons; that statements of accused were not recorded in accordance with the provisions of S. 342, Cr.P.C. and the Courts below also failed to examine the defence version in juxtaposition to the prosecution case and that all this had caused prejudice to the accused persons. Leave to appeal was granted by Supreme Court to examine the contentions and also to re-appraise evidence in the case.<sup>1</sup>

Appreciation of evidence. Plea of sudden fight, when available. Fight between both the parties suddenly took place over dispute to irrigate their fields. Parties were using ordinary implements of agriculture like a hatchet, a Kassi and a Soti against each other when suddenly accused took out a gun and shot the deceased dead by firing at his chest. Although element of suddenness was present in the case, yet mere suddenness of an occurrence was not only required to attract that plea. Such plea was available only if in such a sudden fight accused had not acted in cruel or unusual manner or had not taken undue advantage. Accused had not only acted cruelly and unusually but had also taken an undue advantage. Case did not attract the provisions of S. 302(c), P.P.C. and benefit of plea of sudden fight was not extended to the accused in circumstances.<sup>2</sup>

Defence evidence which appeared to be made up had not been substantiated. Conviction of accused was upheld in circumstances.<sup>3</sup>

Defective examination of accused under S. 342, Cr.P.C. Case remanded. Question of guilt or innocence of accused could not be decided without giving him an opportunity to explain the incriminating circumstances appearing against him as deposed by the prosecution witnesses. Accused had not been confronted with some incidents brought on the record by the prosecution tending to link him with the commission of the offence of double murder. Neither the Trial Court nor the Shariat Court had considered the grave illegalities in the examination of the accused under S. 342, Cr.P.C. Conviction and sentence of accused were consequently set aside and the case was remanded to Trial Court to re-examine the accused according to the requirements of S. 342, Cr.P.C. in the light of the observations made by the Supreme Court and to decide the case afresh according to law.<sup>4</sup>

Appreciation of evidence. Interested witness. Interested witness can be relied upon provided he is corroborated by some independent evidence.<sup>5</sup>

Appreciation of evidence. Eye-witness account of occurrence was in conflict with the post-mortem report of the deceased regarding the injury allegedly caused by the accused. First version of the accused at the time of his arrest before the Investigating Officer was that he was not present at the spot. House from where the crime weapon was recovered was not in exclusive possession of the accused. Accused was extended the benefit of doubt in circumstances and he was acquitted accordingly.<sup>6</sup>

Appreciation of evidence. Retracted confession. Conviction can be based on a retracted confession provided to be voluntary and is corroborated by independent evidence either direct or circumstantial.<sup>7</sup>

Evidence. Interested witness is one who has a motive to falsely implicate the accused.<sup>8</sup>

Sentence. Mitigating circumstances. Immediate cause of occurrence was not brought on the record. Accused had given a single knife blow to the deceased and did not repeat the same. Sentence of death awarded to accused was commuted to imprisonment for life in circumstances.<sup>9</sup>

Abatement of appeal. Accused had inflicted fatal injury on the person of the deceased and he was rightly convicted under S. 302 P.P.C. Since the accused was dead his appeal stood abated, but not his sentence of fine and the amount of compensation awarded to the heirs of the deceased which would remain intact on the basis of principles laid down under S. 431. Cr.P.C., and the same were recoverable from him as a charge on the estate if any left by him.<sup>1</sup>

Complainant was undisputedly injured during the incident and in such condition it was not possible for him to give complete account with mathematical precision about location of injuries inflicted during said turmoil. Agony, disturbed mind and chaos which said witness must be undergoing simultaneously at the time of incident could not be ignored. Minor omissions made by complainant causing conflict of medical evidence with ocular version were, therefore, inconsequential. Courts below after through scrutiny of entire record by assigning logical conclusions had found the accused guilty for the offence committed by him and in their

respective judgments had independently expressed full satisfaction about credibility and convincing nature of the testimony given by the complainant. No substantial reason or legal justification was available for interference with the said concurrent findings of the Courts below. Leave to appeal was declined to accused by Supreme Court in circumstances.2

Appraisal of evidence. Recovery of gun at the instance of accused was of no avail to the prosecution as the same was not found wedded with the empty recovered from the spot. Chemical Examiner's Report about the vaginal swabs to be stained with semen and the opinion of the Doctor at the best proved the commission of sexual intercourse with the victim and of her having died as a result of fire-arm injuries which, no doubt, could corroborate any other evidence, but the same by itself did not connect the accused with the crime. Extra-judicial confession made by both the accused jointly was no confession and could not be relied upon. Evidence of last seen was not creditworthy particularly when it was not corroborated by any evidence. Accused were given benefit of doubt and acquitted in circumstances.3

Appreciation of evidence. Child witness. Testimony of child witness has to be considered with great care and caution and it has to be seen that the child was intelligent enough, possessed good memory and had not acted under any influence.4

Appreciation of evidence. Maxim "falsus in uno falsus in omnibus" having all along been discarded by the Superior Courts of the country is not of universal application and the Court can sift grain from the chaff.5

Appreciation of evidence. Neither pistol alleged to have been used by the accused nor any other incriminating article was recovered from him. Two shots had been fired at the deceased according to eye-witnesses and only two entry wounds were found on the body of the deceased by the Doctor. Both the empties collected from near the dead-body were found by the Forensic Science Laboratory to have been fired from the pistol recovered from co-accused. Incapability of accused in the occurrence did not appear to be beyond reasonable doubt in circumstances. Accused was accordingly acquitted by way of abundant caution.6

Appreciation of evidence. No person from the vicinity had been brought forward or even cited as a prosecution witness. Ocular account was not in conformity with medical evidence. Recovery of gun at the instance of accused had no evidentiary value. No independent corroboration was brought on record to prove the guilt of the accused. Prosecution, held, had failed to prove its case against accused beyond doubt. Accused was acquitted accordingly.7

Appreciation of evidence. Benefit of doubt. Occurrence had resulted on account of sudden flare-up and not as a result of pre-planning or premeditation and, therefore, every accused person was liable for the act committed by him during the occurrence. Accused had not caused any injury either to the deceased or to the injured witness and they could not be held responsible vicariously for the murder of the deceased or the injury caused to the witness. Participation of the accused in the occurrence lacked reliable corroboration. Accused were extended benefit of doubt and acquitted in circumstances.8

Constitutional petition. Case sent to Special Court. Validity. Case was an outcome of an alleged encounter between the deceased persons and the police in which five persons had been killed, but no police personnel was injured or killed. Case had been sent to the Special Court

constituted under the Anti-Terrorism Act, 1997 for trial, jurisdiction of which had been assailed. Offences with which the accused were charged admittedly were not scheduled offences. Trial Court was to decide whether the police officials involved in the case while performing their duty were legally justified to commit the act attributed to them or whether the alleged police encounter was fake or otherwise. Assumption of jurisdiction in the matter by the Special Court was declared to be without lawful authority in circumstances with the direction to prosecution to send the case for trial to the Sessions Court.<sup>9</sup>

Appreciation of evidence. Suggestion made by accused. Effect. Suggestion given on behalf of accused and accepted by the prosecution witness tantamounts to proof of the facts suggested.<sup>1</sup>

Grave and sudden provocation. Plea of. Availability. Where a person comes on the scene after the incident of beating was over, plea of grave and sudden provocation cannot be made available to him as an act to wreak vengeance is different from an act under grave and sudden provocation.<sup>2</sup>

First version of accused can be brought on record. First version of the accused of whatever nature can be brought on record through cross-examination by putting the same to the Investigating Officer.<sup>3</sup>

Sentence, enhancement of. Motive for the occurrence having been shrouded in mystery, sentence of imprisonment for life awarded to accused did not merit enhancement.<sup>4</sup>

Appreciation of evidence. Statement of the complainant recorded by the police at his house which was not signed by him could not be treated as F.I.R. Complainant's version had been seriously contradicted by the investigating Officer. Subsequent improvement made by the complainant adding two eye-witnesses of the occurrence being mala fide, no credential value could be given to their testimony as their names did not appear in the F.I.R. Post-mortem of the deceased having not been carried out, death of the deceased could not be safely inferred to be the direct result of the injuries suffered by him. Dagger recovered at the instance of accused was neither found stained with blood nor the recovery of the same was supported by the Mashirs. Accused was acquitted in circumstances.<sup>5</sup>

Punishment of an offender u/s. 302(c) with regard to offences committed before commencement of S. 302(c) is not hit by Art. 12 of Constitution (1973), as the penalty of imprisonment provided in S. 302(c) is not greater than or of a kind different from penalty prescribed by provisions of S. 302 since repealed.<sup>6</sup>

S.309 does not provide any consequence after grant of UFW by a wali and after payment of their share in Diyyat to walis who are not prepared to forgive. In such case, resort has to be made to Injunctions of Islam to determine ultimate fate of such an offender. Such Injunctions of Islam are provided in S. 302(c), which provides that where punishment by way of qisas is not applicable, the offender could be punished with imprisonment upto 25 years. High Court in such case not confirming death sentences of two convicts but ordering them to pay to walis, not granting UFW, their share in diyyat with sentence of 25 years, as per Injunctions of Islam as evidenced by provisions of S. 302(c).<sup>7</sup>

Appreciation of evidence. Minor contradictions in evidence. Effect. Minor contradictions in the statements of witnesses are natural with the passage of time which cannot materially affect the prosecution case, if the same do not destroy the intrinsic value of the evidence.<sup>8</sup>

Appreciation of evidence. Presence of eye-witnesses at the scene of occurrence was established on record. F.I.R. had been lodged promptly eliminating any chance of deliberations. Eye-witnesses had given a natural account of the incident corroborating each other in material aspects of the case and the intrinsic value of their testimony was not shaken in cross-examination. Confidence inspiring ocular evidence could not be discarded merely because the eye-witnesses were related to the deceased and were interested witnesses. Accused had failed to show that the said witnesses had a strong motive to falsely implicate them in the commission of the offence. Eye-witness account of occurrence was also corroborated by the report of the Ballistic Expert whereby the crime empties secured from the spot were found to have matched with the kalashinkovs recovered from the accused. Statements of witnesses which otherwise appeared to be confidence inspiring could not be discarded merely for minor variations. Motive for the occurrence having not been proved, Trial Court had rightly taken a lenient view in the matter of sentence. Convictions and sentences of accused were upheld in circumstances. Sentence of fine was, however, set aside and the benefit of S. 382-B, Cr.P.C. withheld by Trial Court without giving any reason was extended to accused.<sup>9</sup>

Appeal to Supreme Court against conviction/life imprisonment awarded by Trial Court and confirmed by High Court. Appellant granted bail by Supreme Court but she remaining absent on hearing of appeal. Supreme Court dismissing appeal and ordering forfeiture of surety bond. Supreme Court directing Trial Court to initiate proceedings u/s. 514 for recovery of bond amounts from appellant and her surety for breach of bonds.<sup>1</sup>

Prosecution evidence which is natural and consistent and supported by medical evidence as well as recovery of blood-stained kulhara coupled with positive report of Chemical Examiner, would be safe basis for conviction u/s. 302. Conviction/sentence u/s. 302 recorded by Trial Court and affirmed by High Court maintained by Supreme Court by allowing benefit of S. 382-B, Cr.P.C. to convict.<sup>2</sup>

Appreciation of evidence. Plea taken by accused in his defence was an afterthought and not at all worth reliance as the same was not advanced at the investigation stage, Clothes, Chappals and bottle recovered from the spot at the instance of accused were found by the Chemical Examiner to have been burnt with sulphuric acid. Accused had also led to the recovery of the bottle of acid from the bushes. Deceased girl was proved to have been burnt with acid and the statement of the Lady Doctor, though positive on the point of thermal injury, yet creating doubt with regard to the substance of burning, could not be made basis for discarding the whose confidence inspiring eye-witness account and other circumstantial evidence in the case. Confessional statement made by accused before Magistrate was fully in line with the oral and other circumstantial evidence on record and was voluntary and genuine and the mere fact of its having been made by the accused after 5/6 days of his arrest could not make it doubtful. Motive for the occurrence stood proved. Conviction and sentence of death awarded to accused by Trial Court were confirmed in circumstances.<sup>3</sup>

Appreciation of evidence. Sentence. Presence of father with his son in their own shop at the time of occurrence was not unnatural. No delay had occurred in making the report to the police

and the time span of 50 minutes between the occurrence and lodging the F.I.R. stood explained. Motive had been admitted by the accused in his statement recorded under S. 342, Cr.P.C. Single accused having been charged for the offence, substitution of the real culprit was not possible. Ocular testimony was consistent and confidence inspiring and the same, although having been furnished by a sole witness could be relied upon as same rang true. Conviction of accused was upheld accordingly. Real motive of the occurrence and its immediate cause having been shrouded in mystery, sentence of death of accused was altered to imprisonment for life with benefit of S. 382, Cr.P.C.4

Appreciation of evidence. Factors adversely reflecting on the credibility of a witness not sufficient to discredit his whole testimony. Principle highlighted.5

Appreciation of evidence. Site plan. Site plan itself is not a substantive piece of evidence so that it could contradict the ocular evidence in the case. Site plan is prepared only to explain or to appreciate the evidence on record.6

Points raised to challenge conviction u/s. 302 which are found not to be so weighty and forceful would not outweigh or in any manner annihilate the evidentiary force of prosecution. Conviction u/s. 302 recorded by Trial Court affirmed by High Court in such case as prosecution had succeeded to prove its case beyond any shadow of doubt against convict.7

Maximum sentence of death should be normally abstained in cases where motive is shrouded in mystery and immediate cause of attack is not known. High Court in such case maintaining conviction but reducing death sentence to life imprisonment.8

Appreciation of evidence. Motive as alleged by the prosecution was not proved. Best evidence available to prosecution had neither been produced before the police nor at the trial. Trial had rightly drawn the presumption against the prosecution that evidence withheld by the prosecution if produced before the Court would not have supported the prosecution. Complainant had made certain material improvements in his statement at the trial with which he was duly confronted. Murder of the deceased appeared to have taken place much before the arrival of the eye-witnesses whose evidence had been rightly rejected by the Trial Court. Plea of the accused alone had remained in the field in the circumstances on which he had been convicted and sentenced by the Trial Court. When the statement of accused was the only basis, then it has to be taken into consideration as a whole. Accused according to his statement had seen the deceased and his sister in an objectionable position on which he murdered the deceased under grave and sudden provocation. Conviction of accused under S. 302, P.P.C. was altered to S. 304, Part I, P.P.C. in circumstances and he was sentenced to ten years' R.I. with fine thereunder. Appeal was disposed of accordingly.9

Appreciation of evidence. Presence of the complainant at the venue of occurrence at the relevant time remained uncontroverted who had furnished confidence inspiring unimpeached testimony. Identification of accused by the complainant when the moon was in full bloom was not difficult. F.I.R. had been promptly lodged. Occurrence was also supported by an immediate neighbour who had no motive to falsely substitute the accused as the sole assailant leaving the culprit to go scot free which was a rare phenomenon. Ocular testimony was corroborated by medical evidence. Report of the Forensic Expert Laboratory qua the crime-empties recovered from the spot and received in the Laboratory much earlier to the recovery of the crime weapon

was positive. No mitigating circumstance in favour of accused was available. Convictions and sentences of accused were upheld in circumstances.<sup>1</sup>

Sentence, quantum of. No background of bitterness, ill-will or animosity between the parties existed so as to infer any premeditation on the part of accused party and occurrence developed at the spur of moment. Initially accused was not armed with a gun. Weapon was picked up by the accused only when his father had commanded him to do so and that, too, when brother of accused had already been given an injury with a Kassi by the deceased. Case of the accused had attracted some of the ingredients of exception to S. 302(c), P.P.C. and in such a case the least that Court could do was to award the lesser sentence of imprisonment for life instead of sentence of death. Death sentence awarded to the accused by the Trial Court was altered under S. 302(b), P.P.C. to sentence of imprisonment for life in circumstances.<sup>2</sup>

Jurisdiction of Special Court. Offences had been committed in the same transaction and in combination with each other. Material available with the prosecution had reflected the use of klashinkov as a weapon of offence and commission of a scheduled offence exclusively triable by the Special Court, as such the Officer Incharge of the police station was bound to submit the challan before the Special court under S. 5 of the Suppression of Terrorist Activities (Special Courts) Act, 1975. Conviction and sentences awarded to accused by Sessions Court were consequently set aside and the prosecution was directed to submit the challan before the Special Court.<sup>3</sup>

Appreciation of evidence. Prosecution had failed to prove its case through independent and disinterested witness. Version regarding two occurrences was inexplicable. Motive set up at the first instance was absolutely disowned without any reason. Prosecution witnesses had improved their previous statements and had withheld the truth. Prosecution version when put in juxtaposition with defence version lost its veracity and probability of its being true. Accused had not only caused the death of the male deceased but also the death of his real sister. Family honour in the rural society being of prime importance, finding both the deceased lying together on a cot was sufficient to provoke the accused and deprive him of his self-control. Conviction of accused under S. 302, P.P.C. was consequently converted to one under S. 302, Part I, P.P.C. and he was sentenced to undergo 10 years' R.I. on each count with fine with the direction for the sentences to run concurrently.<sup>4</sup>

Absence of premeditation by itself is a mitigating circumstance for reduction of death sentence awarded by Trial Court into sentence of life imprisonment with benefit of S. 382B, Cr.P.C.<sup>5</sup>

Sentence of death as qisas converted into one as Tazir as requirements of S. 304 had not been fulfilled.<sup>6</sup>

Sentence for murder. It is not universal principle that in cases where origin of fight between deceased and accused is shrouded in mystery, sentence of death should be reduced to life imprisonment.<sup>7</sup>

(i) Arrest of accused with dead-body of deceased would shift onus on them to explain its possession. Their failure to discharge this onus would make them liable to conviction u/s. Convict who is not arrested at spot with dead-body of deceased, would be entitled to benefit of doubt.

(ii) Capital sentence would not be warranted when motive and attending circumstances under which deceased was murdered remained shrouded in mystery. Death sentences to two convicts awarded by Trial Court in such case reduced to life imprisonment.<sup>8</sup>

Involvement of accused in murder occurrence would be established beyond reasonable doubt and he would be rightly convicted when witnesses have deposed on oath that accused was the same person who was apprehended at spot.<sup>1</sup>

Lesser sentence of life imprisonment would be rightly awarded to accused who was attributed fatal shot to deceased. In such case, Supreme Court maintaining lesser sentence and dismissing complainant's petition seeking enhancement of sentence to death sentence.<sup>2</sup>

Conviction once recorded under S. 302 in case of premeditated, preplanned and concerted attack launched with a particular motive to commit murder, normal penalty should be death unless mitigating circumstances exist on record. Supreme Court in such case maintaining death sentence concurrently awarded by Trial court and High Court.<sup>3</sup>

Recovery of dead-body of deceased on pointation of accused, post-mortem report and other recovery evidence coupled with retracted confession of accused which was voluntarily made without pressure, threat or inducement would prove prosecution case against accused beyond any reasonable doubt. Conviction recorded by Trial Court on basis of such evidence affirmed by High Court.<sup>4</sup>

Circumstance that murder was committed in desperation and utter frustration would be a mitigating circumstance calling for reduction of death sentence awarded by Trial Court into life imprisonment.<sup>5</sup>

Re-appraisal of evidence. Sudden fight. Essentials. Element of intentional act in sudden fight. Effect. Application of S. 302, Part I, P.P.C. Requirements. Complainants and accused were both rival political parties and were supporting their respective candidates on the day of occurrence but in spite of the fact that they had opposed each other in earlier election, they had not previously attempted to cause harm to each other. Occurrence, thus, appeared to be result of sudden fight resulting from something untoward happening suddenly. Both parties had injuries apparently from pelting stones at each other. High Court, however, convicted accused under S. 302, P.P.C. on the ground that the act of accused firing shot at the deceased was intentional. Supreme Court after scrutiny of evidence found that application of Exception 4 to S. 300, P.P.C. could not be denied to accused on the facts of the case merely because his act was intentional. Conviction under S. 302, P.P.C. was consequently altered to one under S. 304, Part I and sentence reduced accordingly.<sup>6</sup>

Appreciation of evidence. Confessional statement was neither voluntary nor admissible in evidence for having been recorded on oath. Recovery of weapon of offence was highly doubtful which was not even kept in safe custody by the Investigating Officer. Delay of two months in sending the pistol and the empty to the Fire-arm Expert had not been properly explained. Last seen evidence was not worth credence. Accused was acquitted in circumstances.<sup>7</sup>

Offender would not be entitled to be acquitted and let off only by paying share of diyat to walis who had not granted UFW to him, if any one of the walis had waived his right of qisas against



offender. In such case, offender would not be sentenced to death but would be liable to sentence of 25 years as provided in S. 302(c).8

Conviction u/s. 302 challenged with contention that it was not conducive to natural disposition of mind that person having committed a murder being in a desperate position could be given chase by brother of deceased. Held: (i) This was neither unnatural nor fell within orbit of impossibility because real brother of complainant was murdered before his eyes and the natural relationship which naturally boils the blood did not care about possible danger. (ii) There was no force in contention that it was either unnatural or unlikely of a man to chase the convict murderer.1

Capital punishment is normally not awarded to younger where possibility is that he might have acted under influence of elders. Supreme Court applying this well-settled law and reducing death sentence of convict to life imprisonment as he was younger in age.2

Medical evidence, recovery of empties from scene of incident and shot gun recovered from underneath house of accused coupled with his judicial confession though retracted, would be sufficient evidence to sustain charge of murder against accused. Conviction/sentence of life imprisonment recorded in such case by Trial Court and affirmed by High Court upheld by Supreme Court by dismissing appeal filed to challenge conviction/sentence.3

Murder cannot be condoned on ground that it was committed on ground of siah-kari. Notwithstanding such plea by accused, murder is to be punished with death, unless there are mitigating circumstances to justify imprisonment for life.4

Appreciation of evidence. Accused being admittedly wife of the deceased at the time of occurrence was amongst his legal representatives as sharer and as such had come within the definition of "wali" and her case was covered by Ss. 307 & 308, P.P.C. Conviction and sentence of accused under S. 302, P.P.C. were consequently set aside being not maintainable and instead she was convicted under S. 308(2), P.P.C. Accused had betrayed the confidence of wife and murdered her husband acting in an extremely cruel as well as immoral manner and was not entitled to any concession. Accused was accordingly sentenced to undergo 14 years' R.I. and to pay Diyat the minimum amount of which had been fixed as Rs. 2,20,000.5

Murder, offence of. Conviction for. Challenge to. Section 302(b) was amended by Qisas & Diyat Ordinance which was promulgated on 5.9.1990. Offence was committed prior to promulgation of Qisas & Diyat Ordinance. Trial Court awarded punishment under amended law. Preliminary objection. Qisas & Diyat Ordinance is a substantive law and is prospective in nature. Appellants have been prejudiced by passing of sentence under amended law. It was held that sentence and judgment of Trial Court is set aside, case is remanded with direction that judgment be rewritten keeping in view provision of PPC and not provisions of Qisas and Diyat Ordinance. Appeal accepted.6

Murder, offence of. Conviction/sentence. Challenge to. Contention, that presence of complainant PW 6 and two eye-witnesses PWs 7 & 8 at place of occurrence was doubtful. Complainant (PW6) and two eye-witnesses (PWs. 7 & 8) have been cross-examined at length regarding mode of arrival of assailants, mode of their attack and mode of their departure from place of occurrence. All of them have stood test of cross-examination and defence has failed to

create any doubt in their statements. Mere fact that they are resident of 2 miles from place of occurrence does not mean that their presence at 2:30 p.m. at place of occurrence was not possible. Objections raised are devoid of any force and presence of all three witnesses stands proved. Appeal dismissed.7

Appeal to Supreme Court against conviction/death sentence awarded to two appellants and conviction/life imprisonment awarded to third appellant for murder of boy of 7/8 years of age. Supreme Court holding that prosecution had proved its case on basis of strong circumstantial evidence consisting of extra-judicial and judicial confessions of appellants, motive for murder, recoveries and medical evidence. Looking to the brutal, callous and cruel act of appellants in killing a minor innocent boy, Supreme Court upholding conviction as unquestionable and maintaining death sentences/life imprisonment as appellants did not deserve any leniency in matter of sentence.8

Plea that murder was committed for saving life of wife of convict cannot furnish mitigating circumstance when no details as to how and in what manner attempt to outrage modesty of convict's wife are given.9

Normal penalty of death should be awarded in a murder case if prosecution proves the case beyond reasonable doubt and also establishes motive for murder. If normal penalty of death is not awarded, Court has to make out a case for reduction of sentence on basis of mitigating circumstances.10

Appeal to Supreme Court by four appellants against death sentence for double murder awarded to them by Trial Court and confirmed by High Court. Circumstances of case showing that all appellants took part in effective firing on two deceased and death of two deceased occurred due to fire-arm injuries suffered by them. Prosecution also succeeding in proving motive against appellants. It was held in these circumstances, no case for lesser sentence was made out and appeal against conviction/death sentence awarded to four appellants merited dismissal.11

Accused cannot be saddled for Qatl-i-amd and cannot be punished u/s. 302(b) when murder occurrence was result of grave and sudden provocation. His case would squarely fall within ambit of S. 302(c).1

Murder, offence of. Conviction for. Challenge to. Contention that medical evidence does not specifically state as to what injury was cause of death although death was resulted as a cumulated effect of all injuries and in the absence of motive to sentence of death cannot be imposed. Learned counsel for appellants has not contested his case for acquittal of appellants but has prayed for non-confirmation of death sentence. Medical evidence does not specify as to which injury was cause of death nor motive to have been established beyond doubt. Held: It is well-established principle of law that when motive is not proved beyond doubt capital sentence of death should not be imposed. Secondly according to opinion of doctor death occurred as a result of collective effect of all three injuries and thus, none of them can be individually, independently attributed or burdened for causing death and awarding maximum sentence of capital punishment. Death sentence converted into life imprisonment. Murder Reference answered in negative. Benefit of Section 382-B extended to appellants.2

Suppression by prosecution of injuries on persons from accused side would strongly react against prosecution version and would render it totally unbelievable. It would also detract from veracity of ocular account rendering it unreliable. Conviction/sentence recorded by Trial Court against accused in such case set aside by High Court.<sup>3</sup>

Appreciation of evidence. Recovery memos. having been interpolated were doubtful. No plausible explanation had been tendered by the prosecution for not sending the empty to the Laboratory before the recovery of the rifle. Dead-body at the time of its recovery was decomposed and not identifiable. Nobody having seen the deceased near the place of occurrence, evidence of last seen was not convincing. Conduct of the witnesses deposing about extra-judicial confession allegedly made by accused had cast serious doubt on their veracity and the same was not acceptable on the face of it. Mere fact of the accused having not been able to point out any enmity against the prosecution witnesses was not by itself sufficient to rely upon their evidence which suffered from inherent defects. Accused was acquitted in circumstances.<sup>4</sup>

Reduction of death sentence into life imprisonment. Supreme Court granting leave to appeal to consider whether such reduction was based on sound judicial principles.<sup>5</sup>

The ages of 22 and 27 years of convicts facing death sentence awarded by Trial Court and confirmed by High Court would hardly constitute a mitigating circumstance when double murders were committed by convicts out of private revenge. Held: Private revenge would not constitute a mitigating circumstance for reduction of death sentence.<sup>6</sup>

Appeal against conviction with life imprisonment awarded by Trial Court. Complainant also filing revision petition seeking enhancement of sentence to death sentence. High Court holding that instant case was unseen occurrence and eye-witnesses were procured subsequently. High Court holding that prosecution had failed to prove its case upto the hilt, accepting appeal, setting aside conviction/life imprisonment and also revision petition for enhancement of sentence.<sup>7</sup>

Case of prosecution u/s. 302 would be fully supported by recoveries from spot in shape of blood-stained earth, broken teeth of deceased, empty shell of 12 bore DB shot gun, recovery of pellet extracted from dead-body of deceased during P.M. examination and recovery of DB shot-gun at pointation of accused.<sup>8</sup>

Prosecution would prove its case u/s. 302 beyond any shadow of doubt when it is supported by ocular evidence of three witnesses, evidence of recoveries and medical evidence and plea of accused that he was innocent is found untenable.<sup>9</sup>

Reduction of death sentence awarded by Trial Court into life imprisonment by High Court on appeal filed to challenge conviction/sentence. Mitigating circumstances for such reduction of death sentence are: (1) that an altercation took place between accused and deceased the factum of which could not be understood by them, (2) occurrence was not pre-planned but a chance meeting of both parties resulted in a sudden fight in which accused caused death of deceased, (3) deceased also contributed a little bit during altercation, (4) it is not known as to what had transpired immediately before murder occurrence, (5) there was a dispute over a piece of land between deceased and son of accused and plea of accused was that deceased party wanted to take forcible possession of land by digging drainage and the accused exercised his right of defence to his property.<sup>10</sup>

Appeal against death sentence after conviction of appellant by believing evidence which had been rejected by Trial Court against four other acquitted accused. High Court finding evidence of witnesses who were related to deceased required independent corroboration had not been corroborated. High Court holding that prosecution had failed to prove its case beyond reasonable doubt against appellant, accepting appeal, setting aside conviction/death sentence and ordering acquittal of appellant.1

Appeal against death sentence after conviction under S. 302 would have no force when ocular version by sole eye-witness was supported by site-plan, recoveries, medical evidence and long abscondence of accused.2

Defence to a charge under S. 302. Foundations for arguments are to be first laid in cross-examination or such foundations are inferable from trend of cross-examination.3

Accused would be guilty of murder when all eye-witnesses unanimously ascribed specific role to each of accused and their names were mentioned in FIR initially as well. Conviction/sentence under Ss. 302/34 in such case recorded by Trial Court and affirmed by High Court maintained by Supreme Court.4

Convict would be entitled to benefit of doubt when no injury was caused by him and there was possibility of his false implication. In such case, High Court setting aside conviction/sentence recorded against convict and ordering his release.5

Appeal against conviction/sentence of life imprisonment recorded by Special Court (STA). High Court after reappraisal of evidence finding that prosecution had failed to connect both appellants with murder occurrence beyond reasonable doubt and chargeframed against them had not been proved. High Court accepting appeal, setting aside conviction/sentence and ordering acquittal of appellants.6

Conversion of death sentence into life imprisonment. Case would have no extenuating circumstances when convict had committed murders of two innocent persons. Death sentence confirmed as mode and manner in which deceased persons were done to death did not warrant any leniency in matter of sentence.7

Appeal against death sentence after conviction by Trial Court u/s. 302(a). Record showing that both complainant and accused parties had suppressed facts. High Court finding that case was one of free fight and appellant had no intention to cause death of deceased. High Court altering conviction/death sentence awarded by Trial Court into conviction u/s. 302(c) with sentence of seven years' R.I. plus benefit of S. 382B, Cr.P.C.8

Appreciation of evidence Eye-witnesses had no previous enmity or motive to falsely implicate the accused in the murder case and there was no possibility of any mistaken identity of the assailants. Contradiction in ocular account and medical evidence was not enough to discredit the eye-witnesses. Motive for the occurrence stood proved. Fact that all the accused had gone to the spot armed with deadly weapons and inflicted repeated blows on the body of the deceased had proved their common intention to commit the murder. Ocular evidence being free from major discrepancies or contradictions and consistent on all material points inspired confidence. Conviction of accused was upheld in circumstances.5

Appreciation of evidence. Statement recorded under S. 161, Cr.P.C. in favour of prosecution with a delay of 48 hours after the occurrence becomes doubtful and is out of consideration being the outcome of deliberations.6

Appraisal of evidence. Ocular evidence furnished by natural witnesses inspired confidence which was fully supported by the recovery of weapon of offence (Churi) from the accused and corroborated by the medical evidence. Accused, no doubt, took the plea of having acted under grave and sudden provocation in his statement under S. 342, Cr.P.C. but he did not substantiate the same by leading any evidence and he did not even suffer any scratch during the alleged scuffle. Minor discrepancies in the evidence being insignificant could not benefit the accused. Conviction and sentence of death awarded to accused by Trial Court were confirmed in circumstances.7

Appreciation of evidence. Benefit of doubt. Benefit of doubt, however slight, it goes to the accused.8

Appreciation of evidence. Conjectures, surmises and probabilities deducible from evidence cannot take the place of proof and finding of guilt must rest surely and firmly on the solid and cogent evidence.9

Appreciation of evidence. Maxim "falsus in one falsus in omnibus." Application. Rule that integrity of witness is indivisible cannot be followed in dispensation of criminal justice in the background of prevailing socio-economic and moral/ethical values of the country. Grain, thus, has to be sifted from the chaff in each case in the context of its peculiar features.10

Appreciation of evidence. No direct evidence being available, case against accused was based on circumstantial evidence. Main link of the chain of circumstantial evidence about the recovery of the dead body of the deceased at the instance of accused was not proved by the prosecution. Motive alleged by the prosecution against accused for having committed the murder was also not proved. Medical evidence not showing the deceased having sustained any knife injury recovery of knife in the case was of no significance. Last seen evidence being devoid of any corroboration, by itself was unable to connect the accused with the crime. Accused was acquitted in circumstances.1

Appreciation of evidence. When prosecution evidence is disbelieved, then the statement of the accused under S. 342, Cr.P.C. is to be believed in entirety.2

Plea of grave and sudden provocation would be made out when prosecution case and defence version examination in juxtaposition would suggest that defence plea might be true and such a possibility could not be ruled out altogether. In such case, Supreme Court, by way of abundant caution, altering death sentence awarded to convict by Trial Court and confirmed by High Court in life imprisonment.3

Death sentence awarded to accused by Trial Court and confirmed by Supreme Court would not be reduced to lesser sentence by Supreme Court when qatl-i-amd had been committed in a brutal manner. Supreme Court dismissing appeal seeking lesser sentence and maintaining death sentence awarded to appellant.4

Sentence awarded to minor convict by Trial Judge and maintained by High Court without advert to question as to what was the age of convict at time of occurrence and, if he was minor, whether he had sufficient maturity so as to be able to realize consequences of his act and then award him proper and legal sentence. Supreme Court accepting appeal in such case, setting aside sentence of convict and remanding case to Trial Court to determine this question and then award proper and legal sentence to convict.<sup>5</sup>

Question arising whether offence of murder u/s. 302 or offence of ikrah-i-naqis u/s. 303(b) was made out against accused. Supreme Court holding that there appeared no circumstances to show that offence of ikrah-i-naqis u/s. 303(b), and not offence of murder u/s. 302, was made out against accused.<sup>6</sup>

Conviction/sentence would merit setting aside when ocular evidence is found to be inherently defective and motive evidence has been discarded.<sup>7</sup>

Appeal against conviction with life imprisonment in a case where Trial Court acquitted two co-accused of appellant. Evidence of conspiracy or abetment not found to be inspiring confidence. State Counsel conceding that appellant had no direct motive to fire at deceased. SP Range who investigated case appearing as Court witness and stating in his cross-examination that in his opinion murder had taken place due to damage of crop of deceased as a result of firing by absconder accused. It was held that appellant was entitled to acquittal as prosecution had failed to prove its case against appellant beyond a shadow of doubt.<sup>8</sup>

Conviction/sentence would be unsustainable where evidence lends support to defence plea that convict had no motive to share common intention with co-accused who fired fatal shot at deceased.<sup>9</sup>

Appeal against acquittal. Dying declaration made by deceased could not be relied upon because the truth of its contents was not free from doubt. Ocular testimony had been excluded from consideration. Accused had no direct motive to take the life of the deceased. Abscondence of accused, in circumstances, had lost its significance for the prosecution. Impugned judgment of Sessions Court was neither perverse nor illogical or manifestly wrong and the same did not warrant any interference. Appeal against acquittal of accused by Sessions Court was dismissed accordingly.<sup>12</sup>

Ocular evidence which is corroborated by medical evidence and evidence of recovery, would be sufficient to sustain conviction u/s. 302.<sup>13</sup>

Circumstances that convict sustained provocation on account of fact that this was not returned to him by deceased, would be an extenuating circumstance entitling convict to reduction of death sentence into life imprisonment.<sup>1</sup>

Conviction/sentence based on tutored evidence would be unsustainable as tutored evidence is worst evidence. It should be rejected straightway by giving benefit of doubt to accused without hesitation.<sup>2</sup>

Constitutional petition. Remission in sentence, award of. None of the provisions relating to acts of terrorism was made applicable at the time of submission of challan in the Court. Element of

terrorism was neither present in the F.I.R. nor in the body of the judgment. Accused had been convicted and sentenced under Ss. 302 & 324, P.P.C. and in the absence of the element of any terrorism against them they were entitled to the special remissions granted by the Government vide Notifications issued from time to time. Superintendent of the concerned Jail was consequently, directed to grant such remission to the accused. Constitutional petition was allowed accordingly.<sup>3</sup>

Appreciation of evidence. Confessional statement. Investigating Agencies after extracting confessional statement of the accused did not bother to find out the voluntary nature and truthfulness of the confession through other circumstantial evidence. Investigating Agencies had not proceeded scientifically and also did not apply their mind to the contents of confessional statement. Confessional statement to a great extent was not only exculpatory, but was contradictory to the prosecution evidence and was not supported by the medical evidence. Voluntariness of the retracted confessional statement of the accused being highly doubtful, placing total reliance on such statement had hampered and eroded the effectiveness of the Investigating Agencies. Arrest of the accused was shrouded in mystery and investigation was flimsy and unreliable. Accused in circumstances, was acquitted of the charge.<sup>4</sup>

Appraisal of evidence. Prosecution witness by giving a complete lie to the prosecution version had fully demolished the prosecution case and the same was allowed to go unchallenged. Going of eye-witnesses in the company of the deceased on the day of occurrence was not proved, rather it was contradicted by defence evidence. Sole independent witness of the occurrence had been given up by the prosecution on the usual pretext of having been won over by the accused. Recoveries of blood-stained hatchet and Sotas at the instance of accused were not of any corroborative value as neither the accused who remained at large for 22/23 days after the occurrence could be expected to have let the blood remain on the said article, nor the blood stains on then could remain intact after 32 days of the occurrence particularly when they were buried underground. Participation of one accused in the occurrence who was only 12-/13 years old and had no motive against the deceased was extremely doubtful. Accused were acquitted on benefit of doubt in circumstances.<sup>5</sup>

Appeal against conviction recorded u/s. 302. It was held that counsel for appellant in circumstances of case was quite justified in not whole-heartedly challenging the conviction of appellant.<sup>6</sup>

The erstwhile provisions of S. 303 requiring imposition of death sentence on murder committed by a convict undergoing sentence of life imprisonment are no longer part of PPC but their spirit manifesting intention of legislature still permeates the law. That spirit would require the imposition of death sentence for murder committed by convict undergoing sentence of life imprisonment. Sentence of death imposed by Trial Court in such case would not attract interference by High Court.<sup>7</sup>

Appreciation of evidence. Ocular account itself had made the claim of eye-witnesses of having seen the occurrence doubtful which was not consistent with the dying declaration, medical evidence, inquest report and the inquiry statement. Identification of accused during the dark night from a distance given by the prosecution witnesses was not possible. Accused could not be identified either in torchlight or by his voice. Motive had not been proved satisfactorily. Recovery of incriminating weapons did not inspire confidence. Dying declaration in the case of

being a weaker type of evidence was also not relied upon. Accused was acquitted in circumstances.1

Compromise. Legal heirs of the deceased had pardoned the accused in the name of God Almighty waiving their right of Qisas or Diyat. Compromise was account was consist, cogent and natural and was corroborated by medical evidence, motive and incriminating recoveries. Conviction of accused was upheld in circumstances.9

Witness. Interested witness. Credibility. Witness would not lose his credibility for being related to the complainant or inimical to the accused and it would not be fair to altogether discredit his evidence of pre-suppose the same to be false or fabricated merely for the reasons of his being "interested". Essential to prove that the degree of the interest of the witness had rendered him compulsive liar to maliciously implicate the accused notwithstanding his own knowledge about the accused being innocent.1

Appreciation of evidence. Evidence of motive and Wajatakka were false and fabricated. Evidence of recovery of weapon of offence (gun) was of no avail to the prosecution due to non-recovery of crime-empt and non-availability of Fire-arm Expert's Report regarding its working condition. Retracted extra-judicial confession of the accused alone could not be made the sole basis of his conviction without corroboration which the prosecution had failed to bring on record through any other piece of direct or circumstantial evidence. Prosecution evidence fell short of legal proof required in the case of capital charge to establish the guilt of accused for the murder of the deceased. Accused was acquitted on benefit of doubt accordingly.2

Appreciation of evidence. Sentence. Presence of deceased and eye-witnesses in the house of accused and discussion of the issue relating to the engagement of niece of accused with the deceased at the time of occurrence was natural. Occurrence although was a sudden affair, but it was not a case of self-defence as pleaded by the accused. Defence version showed that except the deceased, the accused and his daughter none else was present in the house at the relevant time but the accused did not produce his daughter before the police in support of defence plea during investigation nor she was examined as defence witness at trial. Withholding the best evidence in his defence the accused could not successfully establish the defence plea through his sole statement, under S. 342, Cr.P.C. Accused while losing self-control during the discussion for some unknown reasons had caused injuries to the deceased and thus, it was not a case of Qatl-e-Amd punishable under S. 302(b), P.P.C. but it fell within the ambit of S. 302(c), P.P.C. Conviction of accused under S. 302(b), P.P.C. was, therefore, converted to S. 302(c), P.P.C. and his sentence of imprisonment for life was reduced to twenty years' R.I. with benefit of S. 382-B, Cr.P.C. in circumstances.3

Appreciation of evidence. Plea of right of self-defence. Scope. Fight between both the parties suddenly took place over a dispute to irrigate their fields. Parties were using ordinary implements of agriculture like a hatchet, a Kassi and a Soti against each other. Accused suddenly took out a gun and shot the deceased dead by firing at his chest. Accused party had launched the initial aggression on the complainant party. Plea of self-defence or exceeding thereof, being not available to an aggressor, plea of self-defence by accused was not accepted in circumstances.4



Appreciation of evidence. Motive. Sentence, reduction in. Defence had failed to establish any enmity of the eye-witnesses qua the accused for his false implication in the case. Presence of eye-witnesses at the scene of occurrence was natural. Matter having been promptly reported to the police, possibility of concoction and fabrication was ruled out. Murder had been committed in daylight by a single accused and substitution of accused in such a case by the kith and kins of the deceased was a rare phenomenon. Ocular account was corroborated by medical evidence and the recovery of "Khanjar" at the instance of accused which was found to be blood-stained by the Chemical Examiner. Only one prosecution witness had narrated the motive for occurrence before Trial Court but it was not clear from his statement that he was present at the time of alleged incident. Even during investigation no independent witness of locality had come forward to support the motive of occurrence. Prosecution, however, had failed to prove the motive for the occurrence which was a valid ground for reduction of sentence. Death sentence awarded to accused by Trial Court was reduced to imprisonment for life accordingly.<sup>5</sup>

Appreciation of evidence. F.I.R. was promptly lodged. Occurrence having taken place in broad daylight, mistaken identity of the culprit was not possible. Accused had the motive to remove the deceased from his way. Prosecution witnesses had no reason to falsely implicate the accused in the case or to substitute him for the real culprit. Medical evidence had supported the prosecution case against the accused. Ten months' abscondence of accused had also pointed towards his guilt and the explanation given by him in his statement recorded under S. 342, Cr.P.C. was neither reasonable nor satisfactory. Documentary evidence brought on record by the defence had in no way weakened the prosecution case. No mitigating circumstance was available on the file in favour of accused to award him lesser punishment. Conviction and sentence of death of accused were confirmed in circumstances.<sup>6</sup>

Appreciation of evidence. Injuries received by the eye-witnesses in the same incident had proved their presence on the spot. Eye-witnesses were minutely unanimous in their statements and had attributed firing to the accused which was supported by medical evidence. F.I.R. was lodged by the injured witness in the hospital with reasonable promptitude excluding all kinds of doubts for deliberation and constitution. Presence of eye-witnesses with the deceased at the scene of occurrence was natural. Eye-witnesses having qualified the test of confidence, non-examination of any outsider as a witness had not damaged the prosecution case. Ocular testimony was strongly corroborated by medical evidence, incriminating recoveries of various kinds and abscondence of accused. Question of mistaken identity of accused and substitution of real culprits by the complainant party, did not arise. Motive for the occurrence having not been satisfactorily established, lesser sentence of imprisonment for life awarded to accused was proper and justified. Conviction and sentence of accused were upheld in circumstances.<sup>7</sup>

Mere fact that two convicts had only fired once without repeating the fire would be no ground for altering death sentence to life imprisonment when case for murder has been established against convicts beyond reasonable doubt.<sup>8</sup>

Revisional jurisdiction. Enhancement of sentence. Conviction recorded under S. 302(a), 302(b), or 302(c). P.P.C. shall always be deemed to have been recorded under S. 302, P.P.C. and the difference in the sub-sections is that of the quantum of sentence alone which prayer can be covered by filing a revision petition for enhancement of sentence.<sup>1</sup>

Conviction with sentence of life imprisonment imposed by Trial Court. High Court on appeal, altering conviction from one u/s. 302(b) to one u/s. 302(c) and reducing sentence of life imprisonment to sentence already undergone.<sup>2</sup>

Circumstance that death of deceased was caused by collective act of convict awarded death sentence and his two acquitted co-accused would be a mitigating circumstance calling for reduction of death sentence. Supreme Court in such case not confirming the death sentence awarded by Trial Court and confirmed by High Court and converting it into life imprisonment.<sup>3</sup>

Appreciation of evidence. Interested witness. Testimony of an interested witness can be accepted for recording conviction provided it finds sufficient corroboration from other circumstantial evidence of the case.<sup>4</sup>

Appreciation of evidence. Sentence, enhancement of. Revision petition filed by the legal heirs of the deceased for enhancement of sentence of accused challenging his conviction recorded under S. 302(c), P.P.C. being within limitation provided for filing the appeal, the same was converted into appeal for the purpose of disposal. Eye-witnesses being related to both the parties chances of false implication of accused due to ulterior motive were totally excluded particularly when they had no enmity with him. Ocular testimony in such circumstances did not require any corroboration, however, it was strongly corroborated by the promptly lodged F.I.R. medical evidence, recovery of crime empties from the spot and three months' abscondence of accused. Statement of the complainant under S. 164, Cr.P.C. having been obtained after he had been won-over by the accused was neither admissible nor true being the statement of a dishonest person who as an eye-witness had absolved the real culprits and involved someone at the instance of others. Abandonment of the complainant had not at all affected the prosecution case which had been fully proved by other eye-witnesses. Conviction of accused under S. 302(c), P.P.C. was altered to S. 302(b), P.P.C. and he was sentenced to imprisonment for life in circumstances.<sup>5</sup>

Conviction recorded by Trial Court by not following salutary principles of appreciation of evidence laid down for safe dispensation of justice, in believing prosecution evidence, would be unsustainable and liable to be set aside.<sup>6</sup>

Confession, in absence of any other corroborative evidence, cannot be made basis of conviction u/s. 302.<sup>7</sup>

Appeal against conviction/sentence recorded by Special Court (Terrorist Activities). High Court holding that prosecution case was unreliable and there was no reason to believe that appellant was guilty of scheduled offence. High Court giving benefit of doubt to appellant and accepting appeal by setting aside conviction/sentence.<sup>8</sup>

Appeal against conviction with sentence of ten years' R.I. plus fine. Sentence reduced to period already undergone as convicts had remained in jail for four years as under-trial and another 4-5 years would be required to decide their fate if case was remanded for fresh trial.<sup>9</sup>

Appeal to High Court against conviction/death sentence by Trial Court. State and complainant also filing appeal against acquittal of other two co-accused. High Court accepting appeal of convict, setting aside his death sentence and ordering his acquittal. High Court also accepting appeal of State and complainant, setting aside acquittal of other two co-accused and convicting

them u/ss. 302/34 with sentence of life imprisonment. Supreme Court upholding acquittal of convict by High Court, setting aside conviction/sentence recorded by High Court against one of two co-accused and upholding conviction/sentence of other co-accused recorded against him by High Court. It was held that assessment of evidence by High Court qua other co-accused convicted and sentenced by High Court cannot be said to be defective which may call for interference of Supreme Court.<sup>10</sup>

Testimony of sole witness on a capital charge under S. 302 generally is not considered sufficient without very strong corroboration. This, however, cannot be a rule of thumb and general application because at times and in circumstances there is no possibility of availability of or presence of any second witness.<sup>11</sup>

Testimony of sole witness can be taken to be sufficient for conviction under S. 302 when ocular account is furnished by single witness with no animus shown against accused who is singly charged for murder.<sup>12</sup>

Case would be that of deliberate and premeditated murder when there is no evidence of any sudden fight between parties.<sup>2</sup>

Standard of evidence should be of unimpeachable character for convicting an accused on capital charge u/s. 302. Circumstantial evidence by way of last seen evidence, extra-judicial confession and recoveries which do not inspire confidence would not be sufficient for proving case against accused beyond any shadow of doubt. Conviction/sentence recorded on basis of such evidence in absence of direct evidence set aside by High Court by accepting convict's appeal.<sup>3</sup>

Appeal to Supreme Court, with its leave, against appellant's conviction/sentence of life imprisonment awarded by Trial Court and upheld by High Court for murdering her husband. Supreme Court finding that eye-witnesses whose evidence was made basis of conviction were unreliable and recovery evidence did not necessarily lead to proof of appellant's guilt. Supreme Court accepting appeal, setting aside conviction/sentence and ordering appellant's conviction/sentence.<sup>4</sup>

Common intention. Accused alleged to have been armed with a danda at time of occurrence whether would have shared common intention with co-accused to cause death of deceased? Supreme Court granting leave to appeal to consider this question.<sup>5</sup>

Benefit of self-defence or sudden fight should be given to accused when accused had not taken such plea but it could be inferred from record.<sup>6</sup>

Accused never remaining consistent in their plea of self-defence and sudden provocation. Defence version on analysis of record appearing to be entirely illogical and unreasonable. Argument that accused at most could be held individually liable and not constructively responsible for crime also found to be without any basis. Held: High Court and Trial Court had correctly drawn inferences from evidence on record that accused had acted in furtherance of common intention in commission of offence and their so-called version was neither proved nor confidence inspiring.<sup>7</sup>

Mere trivial nature of motive for murder is not a mitigating circumstance which could justify reduction of death sentence because many a time offenders commit murder with very trivial motive and some time even without any motive.<sup>8</sup>

Sentence for murder. Triviality of motive does assuage quantum of punishment especially when it is in shape of capital punishment. This privilege, however, can be extended to convict/accused which he is found/adjudged to have committed murder without pre-meditation, deliberation and preparation i.e. when occurrence appears to have taken place at the spur of moment. Extreme penalty of death would not be called for when immediate cause of murder is not known and prosecution is not in a position to explain origin of fight.<sup>9</sup>

Sentence for murder. No allowance should be given in matter of sentence to a desperado with gory and blood thirsty nature. Contended for convict seeking reduction of death sentence that motive for murder was mole-hill instead of mountain and did not call for putting rope around his neck. Contention repelled and death sentence confirmed. It was held that if this logic was allowed to take roots in soil of criminal administration of justice, then murders over trifles would be taken as a casual activity, innocent victims would find no escape and criminal instead claim immunity.<sup>1</sup>

Convict who was not only responsible for gruesome murder of two innocent persons to also inflicted injuries on P.W. would be entitled to no leniency in matter of sentence. Death sentence recorded against him by Trial Court confirmed by High Court after rejecting prayer for reduction in sentence.<sup>2</sup>

Question of lesser sentence is to be viewed with facts of the case involved. It cannot be accepted as a universal rule that whenever the motive alleged by prosecution is found to be weak or is not proved, the Court is bound to award lesser sentence than death for a murder, nor can it be said that a convict is entitled as a matter of right to claim lesser sentence than death when he allegedly acts under the influence of his father or any other elder member of his family.<sup>3</sup>

Normal sentence for an offence of murder is death sentence. This is to be awarded as a matter of course except where the Court finds some mitigating circumstance which may warrant imposition of lesser sentence of imprisonment for life.<sup>4</sup>

Rule that testimony of sole witness on a capital charge is not considered sufficient without very strong corroboration is not a rule of thumb and of general application.<sup>5</sup>

Evidence of sole witness who has no animus against accused who is singly charged for murder would be sufficient for conviction under S. 302.<sup>6</sup>

Death sentence confirmed as conviction was based on testimony of sole witness who was a natural witness, there was no question of mistaken identity and recoveries, site plan and medical evidence had supported ocular version in toto.<sup>7</sup>

Case of grave and sudden provocation covered by Exception I of old S. 300 would fall to be dealt with under S. 302(c). Accused in such case is entitled to invoke defence of self-defence based on Verse 34 of Sura Al-Nisa of Holy Quran.<sup>1</sup>

Appeal to Supreme Court, with leave, by complainant against acquittal recorded by High Court in a case of grave and sudden provocation. Supreme Court setting aside acquittal, holding that accused was liable to conviction u/s. 302(c), convicting him u/s. 302(c) and holding that sentence already undergone by accused would be sufficient u/s. 302(c) to meet ends of justice.<sup>2</sup>

Sentence already undergone by accused may be awarded u/s. 302(c) when it would be sufficient to meet ends of justice.<sup>3</sup>

Appreciation of evidence. Delay in lodging F.I.R. and delay caused in recording statements of prosecution witnesses under S. 161, Cr.P.C. had been plausibly explained. Circumstantial evidence had connected the accused with commission of sodomy and causing injuries to deceased. Nothing was on record to show that anyone of the prosecution witnesses was, in any way, inimical to accused. Evidence of Medical Officer who conducted post-mortem of deceased coupled with Chemical Examiner's Report had clearly established the fact that sodomy had been committed with deceased and that death of deceased had occurred due to shock, haemorrhage and cardio respiratory failure. Probable time shown by Medical Officer between death and post-mortem, fully coincided with timings of occurrence as stated by prosecution witnesses. Confidence inspiring deposition of prosecution witnesses placed on record showed that accused were responsible for murder of deceased and, in view of brutal manner in which accused had murdered deceased, no mitigating ground existed to award lesser punishment to accused. Conviction and sentences awarded to accused by Trial Court were maintained in circumstances.<sup>4</sup>

Appeal against death sentence after conviction for double murder recorded by Special Judge, Anti-Terrorism. Prosecution relying upon ocular evidence, medical evidence and evidence of recoveries to prove its case. High Court evaluating prosecution case in juxtaposition with defence plea set up by convict. High Court finding that defence plea was false, manufactured and figment of imagination appellant while prosecution evidence was reliable. High Court upholding conviction and death sentence and dismissing appeal.<sup>5</sup>

Prosecution version for double murder based on ocular evidence, medical evidence, recoveries and motive when examined in juxtaposition with defence version found to be plausible and sounding to reason. Conviction/death sentence recorded by Special Court, Anti-Terrorism against two convicts upheld by High Court with confirmation of death of one convict and reduction of death sentence into life imprisonment of other convict as there was no direct motive with him.<sup>6</sup>

Defence plea that accused having seen his wife in compromising position with deceased had murdered him rejected by High Court as plea was found to be an after-thought and figment of imagination.<sup>7</sup>

Appeal against acquittal. Accused duly equipped with deadly weapons had formed a body and marched towards the scene of occurrence and opened fire at their victims sitting inside the shop which resulted in death of the deceased and injuries to the eye-witnesses. Such behaviour of accused had clearly demonstrated common intention on their part from the very beginning and their case was fully covered by S. 34, P.P.C. Acquittal of accused from the charge under S. 302, P.P.C. by the Trial Court being misconceived and incorrect was set aside. Accused was consequently convicted under S. 302, P.P.C. and sentenced to imprisonment for life with fine.<sup>8</sup>

Sentence. Absence of motive. Factor of absence of the motive can be considered for the purpose of determining the quantum of punishment.9

Convict awarded sentence of life imprisonment in trial concluded much before on 6.12.1988. High Court on complainant's revision petition by its judgment dated 29.11.1995 enhancing sentence of life imprisonment of convict to death sentence. Supreme Court taking view that award of sentence of death, whose trial had concluded much before 6.12.1988, would not be appropriate even on being found guilty by High Court after 6.12.1988. Supreme Court allowing appeal against judgment of High Court and reducing death sentence to that of life imprisonment.1

Conviction with sentence of life imprisonment awarded by Trial Court would not be sustainable when prosecution had failed to prove presence of convict on the spot at the time of occurrence beyond doubt. High Court in such case accepting appeal of convict, setting aside conviction/sentence and ordering his release.2

Appeal against conviction with life imprisonment .Complainant also filing appeal against acquittal of co-accused and revision for enhancement of sentence to death. High Court upholding conviction/sentence and dismissing appeal of convict after holding that implicit reliance could be placed on ocular evidence was supported by motive and surrounding circumstance. High Court also upholding acquittal of co-accused and dismissing complainant's appeal against acquittal after holding that findings of Trial Court as to acquittal were proper. High Court also dismissing complainant's revision for enhancement of sentence from life imprisonment to death sentence.3

Circumstance that deceased and injured person had received one injury each which had not been specifically attributed to convict, would be a mitigating circumstance justifying reduction of death sentence recorded by Anti-Terrorism Court into life imprisonment.4

Murder, offence of. Conviction and sentence. Challenge to. Complainant admitted that co-accused was named in FIR under suspicion. Delay in recording evidence of complainant by police. All witnesses are close relatives. Contradiction is found in statements of witnesses. No blood-stain found on the cot of deceased. Confession is retracted by appellant. Money dispute was not concerned between deceased and accused but with one of a witnesses. State Counsel also did not support the impugned judgment. Conviction and sentence set aside. Appeal accepted.5

Constitutional petition. Transfer of case to regular Court. Case related to murder due to the previous murder enmity and the deceased, a public servant, was not killed because he was a Patwari or because of the performance of his official duties as Patwari. Reasoning of the Special Court that the case was triable by the said Court because the Patwari was killed when he was on duty was not sustainable as that would mean that when a public servant was killed while on duty, the case would be trial by Anti-Terrorism Court and when he was killed during off duty hours it was not triable by it, Anti-Terrorism Act, 1997, did not create any such classification. Case even did not involve the element of terrorism and had no nexus with the object of the said Act and its Ss. 6, 7 & 8, as it was a simple case of murder due to previous murder enmity and was not committed in a manner which struck terror or created a sense of fear and insecurity in the people or in a section of people except in the ordinary sense of insecurity created at the

time of commission of every crime. Anti-Terrorism Court, therefore, had no jurisdiction to try the case and High Court directed to send the case to the Court having plenary jurisdiction. Constitutional petition was accepted accordingly.<sup>6</sup>

Failure by prosecution to hold identification parade would render the conviction/sentence recorded against accused as not sustainable when there was no other evidence on record to establish the identity of the accused as the person responsible for killing the deceased.<sup>8</sup>

The reasoning that S. 320, PPC can be attracted only if the person on road dies on account of accident is against law. Such a qualification is not continued in any of provisions of PPC. The only ingredient is qatl-i-khata by rash and negligent act. Consideration of being on a road on foot or inside a vehicle is not there and should not be read into the law. Judgment of High Court on erroneous interpretation of S. 320 setting aside conviction/sentence recorded by Trial Court under S. 302 set aside by Supreme Court and conviction/sentence recorded by Trial Court restored.<sup>1</sup>

Death sentence awarded to convict by Trial Court after his conviction under S. 302(b). High Court on appeal reducing death sentence into life imprisonment. Supreme Court noticing that lesser sentence was awarded by High Court on ground that occurrence had taken place in a district where people normally carry guns and such like instances do take place. Supreme Court granting leave to appeal to consider whether such observation can be treated as a mitigating circumstance for awarding lesser sentence.<sup>2</sup>

Abetment in offence of murder is as much a serious offence as that of murder itself. It would be wrong to treat offence of abetment lightly or to take it for granted that allegation of abetment was made against accused just for sake of making some sort of accusation against him. There might be absence of direct evidence of abetment but that is not a factor to consider a person accused of abetment to be innocent as a rule. Evidence of abetment of murder can be indirect or circumstantial and each criminal case has to be examined in light of peculiar facts of the case, in that context.<sup>3</sup>

Constitutional Petition. Jurisdiction of Special Court. Contention that since the Klashinkov recovered from the accused, according to Fire-Arms Expert's report, was not used in the commission of the offence, jurisdiction of Special Court under S. 4 of Suppression of Terrorist Activities (Special Courts) Act, 1975 was not attracted was repelled. Fire-Arm Expert's report could not lead to inference that no unlicensed Klashinkov recovered from the accused was used in the commission of the offence. Allegation of use of Klashinkov was made by the complainant and other prosecution witnesses in their supplementary statements. Question as to whether any reliance could be placed upon such reports was to be answered by Trial Court on recording the evidence of the parties and after dealing with the Fire-Arm Expert's report within the terms of S. 510, Cr.P.C. Constitutional petition was dismissed in limine accordingly.<sup>4</sup>

Appraisal of evidence. Ocular evidence was corroborated by strong evidence of recovery and medical evidence. Prosecution had, thus, successfully with evidence on record. Supreme Court allowing appeal, converting conviction u/s. 304-I awarded by High Court into conviction u/s. 302 and awarding sentence of life imprisonment plus fine. Held: (i) Judges of High Court had failed to notice that version of accused as to self-defence was contrary to medical evidence on record. (ii) There was nothing in evidence to show that deceased had launched any attack on

accused when he was fired at and, as such, plea of self-defence was not available to accused.  
(iii) Accused did not suffer any injury during entire episode which could support his plea that he was entitled to act in self-defence.<sup>2</sup>

Non-arrest of accused by I.O. when there was no evidence to suggest that he had absconded or that he was not available in his village, would be sufficient to support I.O.'s view that accused had not participated in commission of murder.<sup>3</sup>

Guilt of intentional murder duly established but evidence of requisite standard for visiting murderer with sentence of death as Qisas not available on record. In such case, Court has to award sentence of death as Tazir which is an Islamic punishment and is recognized by Criminal Law (Amendment) Act (II of 1997).<sup>4</sup>

Motive to avenge murder of convict's father by deceased who was tried on charge of murder of convict's father but was acquitted, would justify reduction of death sentence awarded by Trial Court in life imprisonment. It was held that in Malakand Division it is a tradition to avenge murder of father and as such this motive would be a mitigating circumstance.<sup>5</sup>  
Recovery of dead-body of victim bearing marks of violence is not the only mode of proving corpus delicti in a murder case. Conviction can be based on cogent and satisfactory proof of homicidal death of victim. Such proof may be by direct ocular account of any eye-witness, or circumstantial evidence or both.<sup>6</sup>

Appreciation of evidence. Medical evidence did not support the statement of eye-witnesses. Prosecution witnesses were unable to specify distance and manner the injury was received by deceased. Mere statement that injury was caused by fire-arm was not sufficient. Medical evidence did not lend support to prosecution version in circumstances.<sup>7</sup>

Appreciation of evidence. Evidence of recovery of blood-stained Chhuri at the instance of accused inspired confidence. Ocular account was corroborated by evidence of recovery as well as medical evidence. Prosecution had, thus, proved its case against the accused beyond reasonable doubt. Conviction of accused maintained accordingly.<sup>8</sup>

Leave to appeal was granted by Supreme Court to the accused to consider the contention that in F.I.R. the complainant himself had disclosed that the motive for committing murder by the accused was that the deceased had cut dirty jokes with his sister which related to family honour and the accused in such circumstances should have been awarded the lesser punishment of imprisonment for life instead of death sentence.<sup>9</sup>

Sentence. Principle. Death sentence is ordinarily to be imposed in murder cases unless the Trial Court for the reasons to be recorded by it considers it proper to award lesser penalty on being satisfied with the presence of mitigating circumstances.<sup>10</sup>

Appreciation of evidence. Interested witness. Relationship by itself is not a valid ground for discarding or rejecting the testimony of a witness. Court, however, is under an obligation to scrutinize the statement of the interested witness with care and caution and if the same is found to be intrinsically reliable or inherently probable then it is sufficient for conviction.<sup>1</sup>



Number of witnesses. Prosecution is not required by law to produce each any every person who had witnessed the occurrence.<sup>2</sup>

Appreciation of evidence. Mere existence of relationship between the deceased and the witness would not make the prosecution witnesses as interested witnesses. Omission by the complainant to mention a 12 bore shot gun in the F.I.R. was not fatal to the prosecution case as he could not be expected to reproduce the occurrence with a photographic memory. Complainant had been fully supported by other two eye-witnesses and they had given a coherent and consistent version of the occurrence. F.I.R. had been lodged within a reasonable time keeping in view the distance between the place of incident and the police station. Complainant and the deceased being the nephews of the accused, there was no reason for false implication or substitution. Sale or purchase of land in the backward agrarian society mostly acted as motive for murders. Accused had been arrested close to the spot with the shot gun which was matched with the four crime empties according to the positive report of the Forensic Science Laboratory. Old age of accused was of no avail to him because his participation in the occurrence was established by the injury on his person and his report made to the police against the complainant party. Accused alongwith his son had mercilessly murdered three real brothers for the sake of a piece of land and he had already been dealt with leniently in the matter of sentence. Convictions and sentences of accused were upheld in circumstances.<sup>3</sup>

Ages of convicts at time of occurrence would be no ground for reduction or alteration of death sentence into life imprisonment.<sup>4</sup>

Refusal on part of mother to give hands of her two deceased daughters to two convicts could not justify double murder of two deceased daughters. The brutal and gruesome manner in which the murders of two innocent girls were committed by two convicts did not warrant any leniency in awarding sentence to two convicts. Death sentence awarded to two convicts by Trial Court and confirmed by High Court would be unexceptionable not meeting interference by Supreme Court.<sup>5</sup>

Entitlement to benefit of President's General Amnesty dated 7.12.1988. Appellant acquitted of charge u/s. 302 but convicted u/s. 304-I with life imprisonment by judgment dated 8.12.1985. High Court by judgment dated 23.12.1993 setting aside acquittal of appellant on charge u/s. 302, convicting him of charge u/s. 302 and awarding him death sentence. Contended for appellant that if he had been convicted u/s. 302 and awarded death sentence by Trial Court by its judgment dated 8.12.1985 death sentence against him would have been commuted to life imprisonment on account of General Amnesty and, therefore, appellant could not be placed in a worse situation only for the reason that he had not been awarded death sentence by Trial Court and instead was awarded life imprisonment u/s. 304-I. Contended that judgment of Trial Court had been passed on 8.12.1985, that is, prior to the date of General Amnesty, and the High Court erred in awarding death sentence to him while allowing State appeal against his acquittal u/s. 302. Supreme Court finding contentions for appellant supported by its reported judgment, accepting the contentions for appellant and converting death sentence into life imprisonment.<sup>6</sup>

Case where prosecution has succeeded bringing home charge of murder against accused. In such case, burden of showing presence of mitigating circumstances for not awarding normal

punishment of death would be on accused which, in circumstances of present case, he had failed to discharge.<sup>7</sup>

Normal penalty of death prescribed for murder should follow when prosecution succeeds in proving case against accused person beyond reasonable doubt. Supreme Court disapproves hesitancy and inhibition on part of Courts to award of sentence of death in cases u/s. 302 and their efforts to fine laboured pretext to alter death sentence to life imprisonment.<sup>8</sup>

Appeal, with leave, to Supreme Court against death sentence to male and female appellants awarded by Trial Court and confirmed by High Court on charge of committing five murders. Supreme Court finding that nature of voluntary confessions of two appellants could not be doubted as the same stood amply corroborated by recoveries of blood-stained clothes, earth and weapons. Supreme Court holding that prosecution had proved its case against appellants beyond any shadow of doubt, upholding conviction and death sentence of two appellants and dismissing their appeal from jail.<sup>9</sup>

Appeal against conviction with life imprisonment plus fine. High Court finding that plea of self-defence raised by appellants appeared to be reasonably possible. High Court giving benefit of this plea to appellants, accepting their appeal, setting aside conviction/sentence and ordering their release.<sup>10</sup>

Finding of guilt recorded by Trial Court against accused would be unexceptionable when two eye-witnesses had a reasonable explanation of their presence at place of occurrence; they had no motive to falsely implicate accused; occurrence in question had taken place in broad day light and finally the occurrence had taken place at a venue which was not a deserted area.<sup>11</sup>

Convict who acted brutally, callously and in sheer cold blood by committing double murder would not deserve any sympathy or mercy in matter of sentence. Death sentence recorded by Trial Court against such convict confirmed by High Court.<sup>12</sup>

Provisions of S. 302 do not envisage imposition of any punishment of fine. In such case, High Court setting aside punishment of fine and not passing an order under S. 544A, Cr.P.C. as no notice was issued to convict.<sup>13</sup>

Eye-witnesses are supposed to narrate what they had seen happening and are not required to explain the physical phenomenon accompanying the occurrence or solve the mysteries arising out of the incident.<sup>1</sup>

Appreciation of evidence. Accused had been nominated in the promptly lodged F.I.R. with specific role. Court in view of the provisions of Art. 17(2) of the Qanun-e-Shahadat, 1984 could act on the evidence of one male or female witnesses in the circumstances of the case as two adult male witnesses had been mentioned in F.I.R. whose statements under S. 161, Cr.P.C. had also been recorded, but they had died after the submission of the challan. Testimony of eye-witness who happened to be the real sister of the deceased and had been injured during the occurrence could not be rejected on the sole ground of her said relationship because neither her presence at the time of incident could be doubted, nor she could leave the real culprits and falsely implicate others like her real uncles and cousins and she being an honest and responsible witness had been rightly believed by the Trial Court. Motive for the commission of

the offence was natural and had been proved. Evidence of the hostile prosecution witness was doubtful and was not supported by any direct evidence. Conviction and sentence of accused were upheld in circumstances.<sup>2</sup>

Witness. Interested witness. Conviction on interested evidence. Conviction on the statement of an interested witness is contrary to the rule of sale administration of justice in criminal cases.<sup>3</sup>

Murder case involving two versions. Trial Court accepting prosecution version, rejecting accused's plea of self-defence and awarding death sentence after conviction u/s. 302. High Court on appeal re-appraising evidence, accepting plea of self-defence and converting death sentence awarded by Trial Court u/s. 302 into conviction/sentence u/s. 304-I. Supreme Court, on appeal with its leave, taking view that prosecution version of incident was more probable and in accord prosecution, as established through unshakeable testimony of other PWs. FIR had been lodged promptly, accused had been named therein, motive for crime was stated, eye-witnesses duly named and there was nothing on record to create any doubt about recovery. There is no contradiction in testimony of PWs in respect of place of occurrence. It was held that it was day time occurrence and a case of single accused and accused was not stranger to eye-witnesses as such there was no likelihood of mistaken identity.<sup>6</sup>

Circumstances which makes it difficult to sift as to with whose shots, out of shots fired by two accused, deceased was killed would be a mitigating circumstance justifying imposition of lesser sentence of life imprisonment. Lesser sentence of life imprisonment imposed by Trial Court for this reason maintained and complainant's revision petition for enhancement of sentence dismissed.<sup>7</sup>

Family honour would be mitigating circumstance entitling convict to reduction of death sentence recorded by Trial Court into life imprisonment.<sup>8</sup>

Conviction for murder recorded u/ss. 302/34 would be unassailable when ocular evidence has been supported by medical evidence, FIR was prompt, convict caused injuries to deceased, gun was recovered from him and report of Forensic Science Laboratory was positive.<sup>9</sup>

Involvement of accused would be doubtful when they were declared innocent during investigation. Conviction/sentence recorded against them u/ss. 302/324 would not be sustainable. High Court in such case accepting appeal of convicts, setting aside conviction/sentence recorded against them and ordering their release.<sup>1</sup>

Conviction/death sentence recorded by Trial Court on charge of murder. High Court on appeal reversing Trial Court, setting aside conviction/death sentence and ordering acquittal of convicts. Supreme Court, on appeal with its leave, upholding High Court and dismissing appeal against acquittal.<sup>2</sup>

Conviction/sentence based on ocular evidence and evidence of recoveries which on analysis were found not trustworthy. Set aside by High Court as not sustainable.<sup>3</sup>

Minority judgment in appeal of convict before Supreme Court which acquitted him in the case, could not be a valid ground for awarding lesser penalty of life imprisonment by way of review of judgment in appeal. Review petition seeking review of judgment of Supreme Court which

allowed appeal against acquittal recorded by High Court by majority judgment and convicted/sentenced petitioner to death dismissed by Supreme Court.4

Conviction of accused recorded by Trial Court u/s. 302(a) through typographical error. Supreme Court, on appeal with its leave, correcting/altering conviction u/s. 302(a) to conviction u/s. 302(b).5

Conviction with sentence of life imprisonment based on dying declaration of deceased, medical evidence and report of Fire-arm Expert. Upheld and appeal against conviction/sentence dismissed.6

Appraisal of evidence. Motive for the murder had not been established. Eye-witnesses including the complainant were not residents of the village of occurrence who could not plausibly justify their presence at the place of incident and their testimony did not inspire confidence. Prosecution in the admitted presence of independent witnesses at the scene of occurrence must have examined some of them to lend support to the interested evidence and due to its failure to do so adverse inference could be drawn against it. Recovery of blood-stained hatchet at the instance of accused had no evidentiary value as it had not been referred to Chemical Examiner to ascertain whether it was stained with human blood. Confessional statement being glaringly inconsistent with the prosecution evidence could not be used against accused to base his conviction. Accused was acquitted in circumstances.7

Appreciation of evidence. True facts suppressed by both parties. Where both the sides had attempted to suppress true facts, a duty is cast upon the Court to sift the evidence with a view to draw proper inference as to the manner in which the occurrence took place and the quantum of criminal liability on either side.1

Counter-version. Motive. Motive in a case of counter-version assumes great significance.2

Appreciation of evidence. Both the parties had not come out with the true version and had suppressed real facts. Case was found to be one of sudden fight. Accused who had admitted their presence at the spot were, therefore, convicted under S. 304, Part II, P.P.C. instead of s. 302/149, P.P.C. and sentenced to imprisonment already undergone by them with fine. Accused were also convicted under S. 323, P.P.C. for having caused injuries to prosecution witnesses and sentenced to one year's R.I. each with fine.3

Leave to appeal was granted for re-appraisal of the entire evidence in the case wherein firstly, the F.I.R., which was said to be prompt and which had been evidence and circumstantial evidence had been successfully proved and that plea of self-defence was not acceptable in circumstances of case.2

Conviction against accused who caused fatal injury would be unquestionable when there are no mitigating circumstances.3

Conviction can be based on sole confessional statement provided it is voluntary and true, though as a rule of prudence, corroboration of confessional statement is sought when there is no other evidence.4

Conviction/sentence recorded by Trial Court u/ss. 302/34 in a case where injuries including fatal injuries were caused by blunt weapon. Converted into conviction u/s. 316 with liability to pay Diyat amounting to Rs. 2,02,158/- plus imprisonment for five years' R.I.5

Appeal against conviction/sentence recorded by Trial Court. High Court ordering acquittal of convict by setting aside conviction/sentence recorded against him u/ss. 302/34 but maintaining conviction u/s. 324 with sentence of five years' R.I.6

Admission by P.W. that previous to occurrence there was quarrel nature of which remained undisclosed would mitigate awarding of capital punishment.7

Appeal against conviction/sentence recorded by Trial Court. High Court finding that two appellants were brothers inter se, had common motive and had acted in furtherance of their common intention to murder deceased. Prosecution evidence also found to be free from doubts and dents. Held: Conviction/sentence was unexceptionable as strong piece of corroboration available on record was sufficient to establish participation of two appellants.8

Appreciation of evidence. Ocular account was corroborated by the complainant who had been told about the occurrence by the deceased himself, recovery of blood-stained knives and medical evidence. Participation of accused of 5 accused was distinguishable and benefit of doubt given to them by Trial Court could not be claimed by 12 convicts.9

Appeal against acquittal. Courts below had discarded the ocular evidence for immaterial minor discrepancies and the established motive for illogical reasons. Medical evidence had, prima facie, supported the ocular evidence. Courts below had neither properly appraised the evidence nor gone into the merits of the case and their findings were superfluous and based on flimsy and immaterial pieces of evidence brought out in lengthy cross-examination of the prosecution witnesses examined after about nine months of the occurrence. Acquittal of accused by the Courts below was consequently set aside and the case was remanded to the Sessions Court for retrial of the accused and decision afresh on merits.1

Appeal against acquittal. Leave to appeal was granted to the complainant to consider the contentions that the evidence of the eye-witnesses who had no motive for false involvement of accused in the case had been rejected by the Courts below without any legal justification which had also inadvertently not considered the admission made by accused in their bail application about the deceased having been killed by their firing.2

Leave to appeal was granted to consider the contention that in the absence of corroboration from an independent source, the ocular evidence which was not relied upon against acquitted co-accused, could not form a sound basis for the conviction of accused.3

Statement of a deceased witness recorded by the police not examined at the trial not to be relied upon. Statement of any eye-witness recorded under S. 161, Cr.P.C. who could not be examined at the trial due to his death, cannot be relied upon.4

Sentence. Mitigating circumstance. Immoral act of vulgar and filthy abuses of the deceased had resulted into his death. Accused in such circumstances was not liable to the maximum penalty of death and the ends of justice would be better served if he was sentenced to imprisonment

for life. Sentence of death awarded to accused was consequently reduced to imprisonment for life by the Supreme Court. Benefit of S. 382-B, Cr.P.C. was also extended to accused.<sup>5</sup>

Murder, offence of. Conviction for. Challenge to. A minor slip by a rustic and old lady during their cross-examination can hardly be fatal to entire case of Acquittal did not merit interference as it was neither perverse nor illegal and three accused were rightly acquitted.<sup>7</sup>

Appeal against conviction with sentence of life imprisonment recorded by High Court. High Court finding that prosecution had succeeded in bringing home guilt to appellant, upholding conviction/sentence and dismissing appeal.<sup>8</sup>

Possibility that convict committed murder out of family honour would be extenuating circumstance justifying reduction of death sentence into life imprisonment.<sup>9</sup>

Appeal against conviction/sentence recorded by Trial Court. Circumstances and facts of the case when taken together leading only to one inference that complainant and PW had not seen occurrence and did not disclose names of accused persons till following time. Time of lodging of FIR shown by police also found to be negated by statement made by complainant himself in Court on solemn affirmation. Held: Prosecution had not been able to discharge its onus and its benefit has to be extended to appellant by setting aside conviction/sentence recorded against him.<sup>1</sup>

Convict having no direct motive. He seems to have been roped for widening the net. Seat and nature of injuries also showing false implication of convict. Held: Convict was entitled to acquittal by way of abundant caution and safe administration of justice.<sup>2</sup>

Prosecution case based on ocular evidence, motive, medical evidence and recoveries would stand fully proved when defence version was not found to be plausible and remained unexplained.<sup>3</sup>

Appeal against conviction based on ocular evidence, medical evidence, evidence of recovery and motive. High Court finding that prosecution case was riddled with doubts and prosecution had not been able to prove guilt of appellants beyond any shadow of doubt. High Court accepting appeal, setting aside conviction/sentence and ordering acquittal of appellants.<sup>4</sup>

Case where murder was committed on account of ghairat and sudden provocation would fall under Exception 1 to S. 300 and make accused liable u/s. 304(I). Conviction/sentence in such case recorded u/s. 302 altered to conviction/sentence u/s. 304(I).<sup>5</sup>

Every individual taking part in occurrence would be responsible for his own act in a case of sudden fight.<sup>4</sup>

Conviction/sentence u/s. 302 would be altered into conviction/sentence u/s. 304-II when defence version appeared to be more probable and prosecution version about occurrence was not found convincing.<sup>5</sup>

Number of injuries suffered by the deceased clearly showed that the participations in the offence were more than one person and the conclusion reached by the two Courts below that

the injuries were caused by more than one person was neither perverse nor contrary to the evidence on record. Leave to appeal was refused in circumstances.<sup>6</sup>

Appreciation of evidence. Trial Court in having found the accused guilty for Qisas had sentenced him to pay Diyat of two lacs and fifteen thousand rupees failing which he was to remain in judicial lock-up for indefinite period. Trial Court could not convert the sentence of Qisas into Diyat without the consent of all the legal heirs of the deceased. Conversion of punishment into payment of Diyat was invalid, illegal and without jurisdiction. Where punishment of Qisas was not punishable according to the Injunction. Where punishment of Qisas was not punishable according to the Injunctions of Islam, offender could be awarded punishment as "Tazir" by the Court when waiver or compounding of right of Qisas was available on record. Trial Court had failed to appreciate the ingredients of Ss. 309 & 310, P.P.C. pertaining to the waiver or compounding of the right of Qisas in "Qatl-e-Amd" liable to "Tazir" under S. 302(b), P.P.C. Case was, consequently, remanded to Trial Court for de novo trial keeping in view the merits of the case.<sup>7</sup>

Appreciation of evidence. Corroboration. Medical evidence by itself does not establish either the identity or complicity of the accused in the crime.<sup>1</sup>

Appreciation of evidence. Presence of eye-witnesses at the place of occurrence at the relevant time was highly doubtful. Medical evidence was in conflict with ocular testimony. Prosecution and not the accused were obliged to clarify the position. Statements of related and interested rather inimical eye-witnesses were not corroborated by any independent source regarding identity and complicity of each accused in the offence. Motive for the occurrence was not proved. Prompt F.I.R. was of no use if the prosecution case was otherwise doubtful. Whole family of the accused i.e. father and three sons, had been involved in the case by the complainant party due to previous enmity. Accused were extended the benefit of doubt in circumstances and acquitted accordingly.<sup>2</sup>

Compromise. Victim of the murderous assault was also dead. Heirs of both the deceased had entered into compromise with the accused and had forgiven him. Prosecution did not oppose the compromise. Petition for leave to appeal was converted into appeal and the accused was acquitted accordingly.<sup>3</sup>

Appeal against conviction/sentence for life imprisonment plus fine. High Court finding that prosecution case against two appellants based on ocular evidence and circumstantial evidence had been successfully proved and that plea of self-defence was not acceptable in circumstances of case.<sup>4</sup>

Death sentence awarded by Trial Court reduced by High Court into life imprisonment as real motive for murder remained shrouded in mystery and prosecution had not come forward with true story.<sup>5</sup>

Mere trivial nature of motive for murder is not a mitigating circumstance which could justify reduction of death sentence because many a time offenders commit murder with very trivial motive and some time even without any motive.<sup>6</sup>

Evidence on capital charge must come from an un-impeachable source or must be supported by strong circumstances that might remove inherent doubt attaching to evidence of interested and

partisan witnesses. It would be highly unsafe to accept testimony on capital charge testimony of witness who had been disbelieved in respect of his own injuries resulting in acquittal of co-accused.<sup>7</sup>

Accused convicted with death sentence by Trial Court. High Court, on appeal, setting aside conviction/death sentence and ordering his acquittal. On appeal against acquittal, Supreme Court finding that no recovery was effected from acquitted accused at time of his arrest and he was also not identified in identification parade. Supreme Court holding that his judicial confession was not accepted by High Court for valid reasons. Supreme Court upholding acquittal and dismissing State appeal against acquittal. Held: (i) Participation of acquitted accused in murder occurrence was doubtful and he was rightly acquitted by High Court. (ii) There was no reason to differ with conclusion arrived at by High Court about his participation in occurrence. (iii) No miscarriage of justice had been done by acquittal of accused by High Court on appeal against conviction/death sentence recorded against him by Trial Court.<sup>8</sup>

Appeal to Supreme Court against conviction and death sentence recorded by Trial Court and confirmed by High Court. Supreme Court finding that appellants were identified in identification parade, fire-arms recovered from them were found to have matched with crime empties recovered from spot, they were named by injured eye-witnesses accompanying the deceased at relevant time and they had a motive against deceased. Supreme Court upholding conviction/death sentence and dismissing appeal of appellants. Held: Appellants were rightly convicted and properly punished with death sentence.<sup>9</sup>

Appeal to High Court against conviction/life imprisonment recorded against appellants. Re-appraisal of evidence showing that all the appellants had led to recovery of respective weapons of offence and ocular account against them had been fully supported by medical evidence. Complainant party found to have received as many as 74 injuries in all on three deceased persons and on person of P.Ws. while accused party received only 34 injuries in all. It was held that evidence on record did not establish that complainant party was aggressor and appellants were rightly convicted/sentenced after holding them responsible for three murders.<sup>1</sup>

Mere lalkara attributed to accused would not be sufficient for conviction of accused when no active participation has been attributed to him. Conviction/sentence recorded against such accused by Special Judge, Anti-Terrorism set aside by High Court.<sup>2</sup>

Mere presence at spot is not sufficient to make accused guilty for commission of murder when he did not inflict any blow on persons of deceased. Conviction/sentence recorded against such accused by Special Judge, Anti-Terrorism set aside by High Court.<sup>3</sup>

Conviction/sentence recorded against accused who remained empty handed during occurrence and possibility of his false implication could not be overruled. Set aside by High Court by accepting convict's appeal and ordering his acquittal.<sup>4</sup>

Appreciation of evidence. Conviction on the testimony of solitary witness. Testimony of sole witness on a capital chare generally is not considered sufficient for conviction without very strong corroboration, but this rule cannot be a rule of thumb and general application; because at times and in some circumstances there is no possibility of availability of or presence of any second witness.<sup>5</sup>



Appreciation of evidence. Sentence, reduction in. One eye-witness (complainant) no doubt was the son of the deceased, but the order eye-witness of the occurrence was not related to the deceased and he was not shown to have any ill-will or any motive for false implication of accused in the case. Occurrence having taken place in a Bazar with a number of shops around it and in a broad daylight, the same could not have gone unwitnessed and the culprit also could not have escaped unidentified. Motive for the murder had been proved. Conviction of accused was maintained in circumstances. Actual immediate cause prompting accused to murder, however, being not certain, sentence of death of accused was commuted to imprisonment for life.<sup>6</sup>

Appreciation of evidence. Sole eye-witness in the case was wife of the deceased who was a natural witness of the occurrence. Mistaken identity of the single accused was a natural witness of the occurrence. Mistaken identity of the single accused was out of question. Medical evidence, incriminating recoveries and site plan had fully supported the ocular version. No motive was alleged for false implication of accused in the case. More than six years long and unexplained abscondence of accused had also corroborated the prosecution story. Conviction and sentence of death of accused were confirmed in circumstances.<sup>7</sup>

Appeal against conviction/life imprisonment recorded by Trial Court. Evidence showing that all three appellants had been nominated and assigned a specific role of causing "injuries to deceased in first instance and then firing indiscriminately on person of deceased. Version given in FIR also found to be corroborated by ocular and medical evidence. Held: There was no force in appeal as appellants had been convicted/sentenced by Trial Court strictly in accordance with law.<sup>8</sup>

Compounding of offences. Subject to the provisions of S. 345, Cr.P.C. as well as Chapt. XVI of the Pakistan Penal Code, all the offences affecting the human body under the said chapter might be waived or compounded and S. 302(b), P.P.C. under which the accused had been convicted was not an exception to the rule. Concept of waiving the right of Qisas or compounding the offence was not restricted only to the cases pending before the Court, but such provisions could be invoked at any time before execution of sentence and Court was always competent to entertain and given effect to the compromise between the parties even after decision of the case and would not be functus officio in matters of compromise. Deceased had been intentionally murdered by the accused in committing the offence of Harabah/robbery and the case could not be said to be not of Qatl-i-Amd. Impugned order of Sessions Court rejecting application of accused for the acceptance of compromise entered into by the accused and legal heirs of the deceased was consequently, set aside and the matter was remanded to the Trial Court for its decision afresh in accordance with law. Revision petition was allowed accordingly.<sup>9</sup>

Death sentence awarded to accused who fired shots with other two accused when deceased lay injured by first shot fired by third accused. High Court finding it difficult to ascertain whether fatal shot was or was not fired by him. It was held that convict was entitled to lesser sentence by reduction of death sentence awarded to him into life imprisonment.<sup>1</sup>

Conviction/sentence u/ss. 302/109/120-B set aside as Sections 302/109 and 120-B were coined and cooked afterwards as a result of overdoing on part of Police Officer.<sup>2</sup>

Revision petition against acquittal. Benefit of doubt. Accused had no motive or any grudge against the deceased for his murder. No recovery had been effected from the accused. Possibility could not be ruled out that the accused might have been roped in just to widen the net. Trial Court had rightly acquitted the accused on benefit of doubt. Revision petition for conviction of accused was dismissed accordingly.<sup>3</sup>

Appreciation of evidence. Awarding punishment of Qisas. Time and day of incident was not disputed and F.I.R. was also not belated. Both accused persons were nominated in the F.I.R. Fact that deceased died on account of fire-arm injuries and female victim was also injured with fire-arm, was admitted with the difference that prosecution had alleged that the injuries were caused by accused whereas accused had claimed that the injuries were caused by firing of a third person who was inimical to the complainant. One of the eye-witnesses had claimed that he had witnessed the assailants at the time of firing from distance of 88 feet, but his eyesight, according to his own version, was so weak that he could not see beyond two yards, statement of said witness, thus, could be discarded. Testimony of female eye-witness was contradicted by complainant, even otherwise her statement could not be given weight equal to that of male witness while deciding case of Qisas. Statement of complainant was not only corroborated by other eye-witnesses, but was also corroborated by circumstantial evidence in shape of recoveries etc. Testimony of complainant who was a natural witness, thus, could not be brushed aside. Recovery of rifle from co-accused was not trustworthy for the reason that same was not recovered at his pointation. Such recovery alongwith Annus "Expert Report to that extent stood discarded. Accused, in circumstances, were rightly found to be responsible for murder of deceased and attempt to murder on female victim. Standard of evidence for sentence of Qisas being not available against the accused, death penalty was not maintainable for the reason that prosecution witnesses were inimical, inter-linked and interested and that incident had taken place on felling of tree in Government land where each party had equal right. Sentence of death awarded to the accused was converted into life imprisonment and co-accused, who was convicted for commission of offence under Ss. 307/34, P.P.C. and S. 15 of Azad Jammu and Kashmir Islamic Penal Laws Enforcement Act, 1974, was convicted and sentence for period he had already undergone in detention.<sup>4</sup>

Constitutional petition. Jurisdiction of Special Court F.I.R. specifically contained an allegation regarding use of 222 rifle by one of the accused persons during the incident. Eye-witnesses mentioned in the F.I.R. had so far stuck to their version made before the police regarding use of such a weapon. Case was, therefore, exclusively triable by the Special Court constituted under the Suppression of Terrorist Activities (Special Courts) Act, 1975. Failure on the part of the police to recover such a rifle or any opinion of the Investigating Officer regarding use or otherwise of such a rifle during the occurrence, could not take away the jurisdiction of Special Court to try the case. Decision about jurisdiction of a Court to try a criminal case could not be abdicated to the whims or conclusions of an Investigating Officer. Wrong assumption of jurisdiction by Sessions Court of the case had not divested the Special Court having the necessary jurisdiction in the matter of its authority or jurisdiction to try it. Impugned order of Special Court summoning the case for trial was consequently upheld and the Constitutional petition was dismissed accordingly.<sup>5</sup>

Appeal to Supreme Court against acquittal recorded by High Court on appeal against conviction/death sentence recorded by Trial Court. Acquittal appeal accepted by Supreme Court by majority judgment (2 to 1) by convicting petitioner and sentencing him to death. Petitioner

through review petition seeking reduction of death sentence of life imprisonment by invoking principle of expectancy of life earned by him by acquittal recorded by High Court and delay of less than three years in disposal of appeal against acquittal. Held: (i) Keeping in view the increased workload in the Courts and time generally taken for decision of such cases, the period of about three years cannot be considered as a period long enough to create expectancy of life in favour of petitioner. (ii) Insofar as period after that of judgment of Supreme Court was concerned, petitioner could not claim any advantage for the same as he remained an absconder until date when he was admitted to bail by a Bench of Supreme Court. (iii) Even the period spent by petitioner on bail after his admission to bail would be of no advantage to petitioner as petitioner was not entitled to grant of bail because notice issued in his review petition was only for consideration of quantum of sentence which in any case could not be less than life imprisonment if the Supreme Court allowed his review petition. (iv) Petitioner was not entitled to reduction of death sentence into life imprisonment on doctrine of expectancy of life with result that his review petition was liable to be dismissed.<sup>6</sup>

Court awarding death sentence is not required to record any reasons for awarding death sentence. Normal sentence for murder is death even under ta'zir and it is only when lesser sentence of life imprisonment is awarded that the Court is required to record reasons for awarding lesser sentence. Fact that Trial Court or High Court did not give any reasons for awarding death sentence would be no ground for altering death sentence or for making any grievances against the award of death sentence u/s. 302(b).<sup>7</sup>

Principle of proportionality should not be lost sight of while considering reasons as mitigating circumstances. If a person is slapped, the aggrieved person or a close relative of the aggrieved person does not get the right to come back after a week duly armed with specific intention of killing and committing cold-blooded murder of deceased who gave slap. The person who had been slapped a week back cannot take a plea in trial for reduction of sentence that murder was natural reaction to the slap given to him or to his close relative a week back by deceased. There should be at least some semblance of proportion between the injury or insult given by deceased and reaction by the accused in killing the deceased and then the question of time lag between the so-called provocation and the reaction in the form of cold-blooded murder is also relevant. There is always a distinction of degree between a fight which leads to a murder on spur of the moment or within a short time and a case where there is considerable time lag between the so-called provocation and the so-called reaction in the form of murder. In the first category of cases, perhaps it might be possible to advance the argument that a case for lesser sentence is made out subject to proportionality between provision and reaction, but in the other category of cases, without there being other mitigating circumstances, no case would be made out for awarding lesser.<sup>8</sup>

Evidence. Circumstantial evidence. Essentials for proof. Four essentials are required to prove a case through circumstantial evidence, namely (i) circumstances from which conclusion is to be drawn, should be fully established, (ii) all facts should be consistent with the hypothesis of the guilt of accused, (iii) circumstances should be of a conclusive nature and (iv) circumstances should lead to moral certainty and actually exclude every hypothesis but one proposed to be proved.<sup>1</sup>

Evidence. Circumstantial evidence. Last seen evidence. Last seen evidence being the weakest type of evidence cannot be relied upon unless it is corroborated by some other strong incriminating piece of evidence.<sup>2</sup>

Evidence. Circumstantial evidence. Proof. Failure of prosecution to prove one link of the chain of circumstantial evidence destroys all the links of such evidence.<sup>3</sup>

Grave and sudden provocation. Allegation alone of moral laxity without having been substantiated by any unimpeachable evidence would not constitute grave and sudden provocation.<sup>4</sup>

Medical evidence. Value. Medical evidence may confirm the ocular evidence with regard to the seat of the injury, nature of the injury, kind of weapon used in the occurrence, duration between the injuries and the death and presence of the injured prosecution witness or the accused on the spot, but would not connect the accused with the commission of the crime. Same principle is applicable to the report of the Chemical Examiner.<sup>5</sup>

Appreciation of evidence. Belated statements of witnesses. Credibility of evidence is looked with serious suspicion if the statement of a witness is recorded under S. 161, Cr.P.C. with delay without offering any plausible explanation.<sup>6</sup>

Appreciation of evidence. Prosecution evidence regarding the accused having been seen near the place where the dead-body was found buried was not free from doubt. Evidence about extra-judicial confession allegedly made by accused did not inspire confidence. Medical evidence did not support the prosecution case. Deceased being a married woman, vaginal swabs found to be semen-stained could not establish the fact of Zina-bil-jabr having been committed with her. Evidence of incriminating recoveries was doubtful. Accused was acquitted in circumstances.<sup>7</sup>

Appreciation of evidence. Accused had not caused any injury to the deceased and had allegedly made only four ineffective fires at the spot after snatching the revolver from the deceased. Crime-empties secured from the place of incident and the pistol recovered at the instance of accused were neither sealed into parcels by the Investigating Officer, nor the same were sent to Forensic Science Laboratory for comparison. Recovery evidence, therefore, had no value. Ocular account of occurrence was not corroborated by any independent piece of evidence. Accused was extended the benefit of doubt and acquitted in circumstances.<sup>6</sup>

Appreciation of evidence. Presence of eye-witnesses on the spot at the relevant time was not unusual, rather it was quite natural. Improvements made by eye-witnesses in their statements were negligible. Accused due to established enmity between the parties had the motive to commit the murder of the deceased. Ocular testimony was corroborated by medical evidence as well as by the evidence of recovery. Crime-empties secured from the place of occurrence were found to have been fired from the gun recovered at the instance of accused. Conviction and sentence of death of accused were confirmed in circumstances.<sup>7</sup>

Appreciation of evidence. Possibility of the accused having acted under grave and sudden provocation at the time of occurrence was not supported by any direct or circumstantial evidence. Occurrence was premeditated. Ocular account of unimpeachable character was corroborated by the evidence of recovery of crime weapon, motive and admission of accused.

Report of Forensic Science Laboratory showed that out of three crime-empties recovered from the place of occurrence two were found to have been fired from the pistol recovered from the accused. Discrepancy to the extent of one empty would not materially affect the testimony of injured witnesses who had no reason to falsely involve the accused by substitution. Conviction and sentence of accused were upheld in circumstances. Accused had killed the deceased on his failure to marry her by firing successive shots at her and also made an attempt at the lives of her younger brother and sister on their intervention in a brutal manner and he did not deserve any leniency in the matter of sentence. Appeal of accused was consequently dismissed and sentence of death awarded to him by Trial Court was confirmed.<sup>8</sup>

Appreciation of evidence. Presence of eye-witnesses at the scene of occurrence was established. Eye-witnesses had corroborated each other confirming the prosecution story narrated in the F.I.R. and their evidence inspired confidence. Ocular testimony was fully supported by medical evidence. Minor discrepancies and contradictions in evidence could not dislodge the prosecution case. Persons present at the spot must have scattered on the happening of the incident and even otherwise due to trend in the society nobody from the public would offer himself as eye-witness by taking the risk of enmity with the accused, and close relatives of the deceased alone had given evidence of the occurrence. Conviction and sentence of accused were upheld in circumstances.<sup>9</sup>

Death sentence of convict who was less than 18 years of age at time of occurrence and had committed crime under influence of his father reduced to life imprisonment. Death sentence of co-convict who was about 20 years of age at time of occurrence and mature enough so as to resist nefarious design of his father upheld by Supreme Court.<sup>11</sup>

Ocular evidence and other circumstantial factors fully supported by medical evidence would establish guilt of accused beyond any shadow of doubt when there does not exist even an iota of evidence which may justify defence theory of grave and sudden provocation. Conviction/death sentence recorded by Trial Court in such case and confirmed by High Court upheld by Supreme Court.<sup>12</sup>

Appreciation of evidence. Prosecution version as contained in F.I.R. showed that first motive behind occurrence was that a cousin of accused was abducted by deceased who later on contracted marriage with her and other limb of motive was that deceased suspected accused responsible for committing theft of bullock of his nephew. Prosecution had not brought on record any convincing evidence to the extent of motive pertaining to theft of bullock of nephew of deceased, but other limb of malice with regard to abduction by and marriage of deceased with cousin of accused stood admitted even by accused while recording statement under S. 342, Cr.P.C. Admission on part of accused had proved that they had a case of grievance to commit offence. Evidence of recovery of rifle, empties and Report of Forensic Science Laboratory, only had proved participation of accused, but it did not advance prosecution case regarding participation of co-accused. Medical evidence had further corroborated prosecution version only to the extent of participation of accused. Evidence on record had fully proved that only accused was responsible for causing murder of the deceased. Prosecution having failed to prove participation of co-accused in commission of offence, conviction and sentence awarded to co-accused by Trial Court were set aside and he was ordered to be released. Prosecution having succeeded in bringing home guilt to accused beyond any shadow of doubt, his conviction and sentence were upheld.<sup>13</sup>

Sentence. Mitigating circumstance. Both the accused were brothers inter se and they admittedly had blood feud with the complainant party details of which were not given in the F.I.R. Sentence of death awarded to each accused was commuted to imprisonment for life in circumstances.1

Appreciation of evidence. Occurrence had taken place in daylight and the parties were known to each other. Eye-witness having sustained fire-arm injuries in the same transaction, his presence could not be excluded from the scene of occurrence who had also reported the matter himself to the police. Relationship of the said witness with the deceased was not sufficient to discard his evidence which otherwise was credible and was even sufficiently corroborated by medical evidence, incriminating recoveries from the spot and prolonged abscondence of accused. Crime empties secured from the place of incident had also matched with the kalashinkovs recovered from the possession of accused. Convictions of accused were upheld in circumstances.2

Appreciation of evidence. Case of prosecution mainly rested on dying declaration of deceased and confessional statement of accused. Dying declaration of deceased was recorded after about 1-1/2 or 2 hours of occurrence and as per post-mortem report deceased had received such serious injuries that it could not be said that deceased in such serious condition could retain his senses and deceased when brought to the hospital, at the time of examination was in shock/coma and could not speak toherently. Dying declaration of deceased, in such circumstances, required independent corroboration. Confessional statement of accused which, later on, was retracted also could not be relied upon in view of manner and method of recording same. Despite availability of Illaqa Magistrate at relevant time, accused was produced before person who claimed to be posted as S.D.M./A.C. at time of recording confessional statement of accused and no reason was given for not producing accused before Illaqa Magistrate. Person who recorded confessional statement of accused was not familiar with language of "Pushto" spoken by accused and confessional statement of accused was recorded by him with assistance of his Steno and person recording confessional statement had not given memorandum to that effect with confessional statement which was a legal necessity. Provision of S. 364(3), Cr.P.C. had, thus, been violated in recording confessional statement of accused. Accused remained for three days in custody of police when his confessional statement was allegedly recorded, but officer who recorded confessional statement did not ask accused about police torture nor had physically got him examined to verify that fact. Statement of solitary eye-witness, who later on died, though was recorded under S. 164, Cr.P.C. but he was not cross-examined. Said statement was rightly not considered by Trial Court. Alleged occurrence had taken place at dark hours of night, but prosecution had brought nothing about identification of accused. Prosecution having failed to prove case against accused, conviction and sentence of accused was set aside and he was acquitted of charge against him.3

Appreciation of evidence. Murder reference. Confirmation of death sentence. Injuries attributed to both accused persons were on non-vital part of body of deceased and injured prosecution witness, would be very harsh, in such circumstances, to confirm death sentence awarded to accused. Sentence of death awarded to accused was reduced to imprisonment for life in circumstances.4

Constitutional petition. Jurisdiction of Special Court. Deceased being a public servant (Head Constable), case against accused fell under para. 2(a)(ii) of the amended Schedule to Anti-Terrorism Act, 1997. Word "or" occurring in the last of the said sub-para. (ii) showed that sub-

para. (iii) was an independent paragraph and was not to be read as continuation of sub-para. (ii). Special Court, therefore, had the jurisdiction to try the case in which the deceased was a public servant, even if the offence was committed before the commencement of the Anti-Terrorism Act, 1997. Constitutional petition was dismissed in limine accordingly.<sup>5</sup>

Appreciation of evidence. Incriminating recoveries effected in the case could not, in any manner, advance the prosecution case. Last-seen evidence was too remote to connect the accused with the commission of the offence. Evidence of extra-judicial confession having not inspired confidence, was not acceptable. Prosecution evidence was deficient qualitatively as well as quantitatively. Accused was acquitted in circumstances.<sup>6</sup>

Appreciation of evidence. Description of the injuries given by the complainant being the ocular account of occurrence had to be believed and given preference over the opinion of the Medical Officer on the principle that "seeing of a thing leads to its belief whereas an opinion is a formation of view in the light of the circumstances placed before a person". Complainant's evidence was sufficient to sustain the charge against the accused which was corroborated by the medical evidence and the report of the Forensic Expert whereby the crime empties collected from the spot were found wedded with the gun recovered from the accused which was used for the murder of the deceased. Prosecution had, thus, proved its case against accused beyond any shadow of doubt. Motive for the occurrence and the immediate facts leading to the murder being shrouded in mystery, death sentence was rightly not awarded to the accused by Trial Court. Conviction and sentence of accused were maintained in circumstances.<sup>7</sup>

Appreciation of evidence. Eye-witnesses were independent natural witnesses of the occurrence having no rancour or ill-will against the accused. Ocular testimony was corroborated by medical evidence and inspired confidence. Motive for the commission of the offence was proved. Crime empties secured from the place of occurrence were found wedded to the rifle recovered at the instance of the accused. Recovery evidence which was taintless had gone unshaken. Accused in their judicial confessions had given in detail the motive for committing the gruesome murder and the manner in which they perpetrated the same and despite the confessions having been retracted, they were found to have been made by the accused of their own free will. Conviction and sentences of accused were upheld in circumstances.<sup>8</sup>

Appreciation of evidence. Medical evidence corroborated statement of prosecution witness. Complainant reported the occurrence to Station House Officer of Police Station, prior to post-mortem and same was reported without seeing medical report. Specific role of accused persons was attributed in the complaint. Putting all the circumstances in juxtaposition, it had become clear that medical evidence had corroborated the statement of prosecution witness, the complainant. Injuries in medical evidence had provided independent corroboration, so the statement of complainant was trustworthy. Presence of complainant at venue and time of occurrence remained unimpeachable. Incident was promptly reported to police station. Prosecution case stood proved by ocular account furnished by complainant in circumstances.<sup>9</sup>

Appreciation of evidence. Motive pleaded in F.I.R. against a particular accused. Effect. Where motive was specifically pleaded in the F.I.R. and was deposed at trial by the complainant against an accused person and corroborated by another prosecution witness, the same was proved against the accused person.<sup>10</sup>

Appreciation of evidence. Motive was admitted by accused. Motive, thus, had become independent piece of evidence to connect the guilt of accused.<sup>11</sup>

Appreciation of evidence. Nothing had been stated either in the F.I.R. or deposed in the Trial Court by the complainant or the other prosecution witness against the other accused person, such accused person stood exonerated from the charge.<sup>12</sup>

Appreciation of evidence. Ocular testimony of eye-witnesses inspired confidence and was in full consonance with medical evidence against accused person. Motive set up by prosecution against accused person was proved while the presence and participation of the co-accused was doubtful. Prosecution had successfully proved its case against accused and his sentence and conviction by the Trial Court was maintained whereas that of co-accused was set aside and he was acquitted in circumstances.<sup>13</sup>

Sentence, reduction of. Deceased was released on bail 2-1/2 years before the incident. During that period no unpleasant conflict had taken place between the parties. Possibility of immediate motive could not be ruled out, as the same remained shrouded in mystery. Sentence of accused was reduced from death to life imprisonment in circumstances.<sup>1</sup>

Appreciation of evidence. Eye-witnesses were natural witnesses of the occurrence who were present at the spot to offer Fajar Prayer. Eye-witnesses who had no motive to falsely deposed against the accused had correctly identified them in the Court and their evidence having inspired confidence could be safely relied upon. Conspiracy on the part of accused had been proved, who had excited and instigated the remaining accused to indulge in gruesome carnage. Ocular testimony had established beyond any ambiguity that the persons had been killed because of firing from the automatic weapons and non-performance of their post-mortem, therefore, could not be fatal to prosecution case as medical evidence could merely provide corroboration to substantive or circumstantial evidence and not any accusation against the person charged for the offence. Failure of Trial Court to specifically convict the accused under S. 109, P.P.C. was, in the circumstances, an omission, which could be cured by High Court under S. 423(1)(d), Cr.P.C. as the same had not caused any prejudice to the accused concerned. Terrorism in the form of sectarian killings having increased and assumed alarming proportion in the country, severe sentence was necessary. Twenty-five out of thirty-nine injured witnesses had appeared in the Court and although they had stated to have been injured due to firing, yet they were scared to death to name the assailants despite being in a position to identify them. Convictions and sentences awarded to accused by Trial Court were upheld in circumstances. Conviction of accused under S. 324, P.P.C. was, however, set aside as none of the witnesses was able to identify the culprits causing them injuries.<sup>2</sup>

Decision of criminal cases on "Nian", appreciation of. Decision of criminal cases on "Nian", no doubt cannot be appreciated, but if it is in line with the rest of the evidence, examined during the investigation or at the trial, it would be worthwhile to take it into consideration, particularly when supported by the other circumstances of the case.<sup>3</sup>

Appellant/Convicts of death sentence, and life imprisonment plus fine. Witnesses produced by prosecution lack confidence and fail to find material corroboration from independent source. Statements of chance witnesses when related to deceased are seldom, relied upon in a case involving capital charge, unless they furnish plausible explanation for their presence at the site.



Despite his claim of good knowledge of appellants, the complainant gave wrong names of culprits. Complainant claimed that F.I.R. lodged by him was recorded by I.O., while Head Constable deposed that it was he who recorded it. Motive was clearly absent. Pistol allegedly recovered from appellant was of 32 bore whereas injuries sustained by deceased were caused by pellets. No crime empty recovered. Medical evidence produced has no supporting value in this case. Appeal accepted.4-5

Motive would not play any effective role on question of sentence when it has been established beyond reasonable doubt from evidence that convict had committed a premeditated cold-blooded murder in a very brutal manner. In a case of cold-blooded, premeditated and brutal murder, where case has been established beyond reasonable doubt by evidence on record, no argument can be built up for reduction of sentence on ground that, motive was "shrouded in mystery". It was held that in circumstances of case, death sentence awarded to appellant by Trial Court and confirmed by High Court was legal and appropriate sentence and did not call for interference by Supreme Court on ground that motive for murder was shrouded in mystery.6

It is not rule of general application that where motive is shrouded in mystery, it is invariably a case for awarding lesser sentence.7

"Motive shrouded in mystery" is not a legal principle which can be applied in all murder cases for reduction of capital sentence where there is no motive alleged/proved by prosecution or where initially a motive is alleged but the same is not proved or withdrawn or a different motive appears in the prosecution evidence. "Motive shrouded in mystery" by itself is not a mitigating circumstance for lesser sentence. Where there is no motive alleged but guilt of accused is otherwise established on basis of evidence it could be said that in such a case the motive is "shrouded in mystery" and that it cannot be said as to what was the precise and immediate reason for murder.8

Appreciation of evidence. Both eye-witnesses had corroborated prosecution version in all respects. Prosecution witnesses were cross-examined at length, but no material contradictions had been brought on record by accused. Doctor, who conducted post-mortem examination of deceased found ten injuries by fire-arm on his person. Collective effect of said injuries was sufficient to cause death of deceased in ordinary course of nature. Report of Forensic Science Laboratory had clearly shown that empty recovered from place of occurrence had been fired from gun which was recovered at the instance of accused and was taken into possession by police. Occurrence having taken place in broad daylight, there was no question of false implication as well as of substitution. Fact, that accused was responsible for causing intentional murder of deceased, had fully been proved beyond any shadow of doubt. Accused, in circumstances, had rightly been convicted and sentenced in accordance with law.9

Ocular version of murder occurrence would not be preferred when prosecution did not approach Court with clean hands as complainant and witnesses mustered courage of implicating as many as five persons for a single consultantly. This aspect of the case would strongly militate against bona fides of prosecution version. OBSERVED: It is ironical to notice that with the deterioration of values and standards in society, there has been a growing tendency to rope as many members of the family of accused as possible. This practice often leads to the acquittal of the real culprit as well in view of exaggeration and concoction of prosecution, which must be deprecated.9

Defence plea of alibi to a murder charge. It would be wrong to hold that since accused failed to examine themselves on oath in disproof of charge, plea of alibi was not established to dispel the impact of ocular evidence.10

Conviction on charge of murder can be based on solitary statement of interested witness if it is corroborated by medical evidence, surrounding circumstances, motive and absconion of accused. Supreme Court in such case maintaining death sentence awarded to accused by Trial Court and confirmed by High Court.11

Charge of murder would be proved against accused when eye-witness account is corroborated by medical evidence, motive, abscondence of accused and opinions of I.Os. Conviction/sentence in such case concurrently recorded by Trial Court and High Court affirmed by Supreme Court.1

Case of indiscriminate firing by accused at deceased. In such case, contention that number of injuries on persons of deceased did not commensurate with number of fires said to have been made would be without substance.2

Convict aged 75 years would be entitled to reduction of death sentence on rule of consistency when death sentence of his co-convict aged 70 years was reduced to life imprisonment.3

Death sentence of convict who was 16 years of age at time of incident reduced to life imprisonment as he had acted under influence of his father.4

The principle of expectancy of life has undergone a change by efflux of time. Now it is firmly established that it is by itself not sufficient for withholding normal sentence of death for murder.5

Circumstance that motive for murder set up in FIR was not established and real motive was shrouded in mystery would be an extenuating circumstance justifying lesser sentence of life imprisonment. Supreme Court in such case maintaining life imprisonment awarded by High Court and refusing to enhance to death sentence.6

Acquittal of accused of charge under S. 452 would have no substantial effect on murder charge under S. 302.7

Conviction cannot be based on statement of interested witnesses who are not truthful in making their statement.8

Transfer of other relevant case by order of High Court would not make prosecution case weak or non-extent qua accused/assailants.1

Appreciation of evidence. Testimony of relatives. Requirements. Testimony of relatives if corroborated by circumstantial evidence or other pieces of evidence, cannot be thrown out of consideration on the sole ground of relationship.2

Appreciation of evidence. Conviction on the testimony of a single eye-witness. Conviction can be based on the testimony of a single eye-witness if he is wholly reliable and passes the test of reliability and there is no rule of law or evidence saying to the contrary. Where, however, some

circumstances show that such a single eye-witness could have an interest in the prosecution, the Courts generally insisted upon some independent corroboration of his testimony in material particulars before recording conviction. Evidence of a sole eye-witness found to be wholly unreliable is discarded in toto which cannot be cured by any amount of corroboration.<sup>3</sup>

Non-explanation of Investigating Officer. Effect. Investigating Officer who had conducted the entire investigation of the case had not been examined and he was not even formally given up by the prosecution. Investigating Officer was a very important witness for the prosecution as well as for the defence and in absence of his evidence trial could not be said to have been properly concluded. Non-examination of the Investigating Officer in the absence of very strong reasons, such as his death or his being not traceable despite all possible efforts, was alone sufficient to render the conviction of accused unsustainable. Conviction and sentence of accused were consequently set aside and the case was remanded to Trial Court to examine the Investigating Officer and in case of his being not available any other person competent to testify on his behalf and to decide the case afresh reassessing the entire evidence adduced by the parties.<sup>4</sup>

Principle of expectancy of life per se is not a valid ground now for awarding lesser punishment of life imprisonment in cases involving capital punishment. Earlier view of Supreme Court that delay in disposal of cases involving capital punishment may give rise to expectancy of life to an accused and, therefore, in such cases capital punishment may not be awarded by Court while maintaining conviction has undergone a change as it has not been followed in a larger number of cases decided in later years. It was held that even otherwise, the facts of the present case did not justify application of principle of expectancy of life as petitioner was acquitted by High Court on 16.2.1991 and his acquittal appeal was decided by Supreme Court on 25.11.1993 in less than 3 years' time.<sup>5</sup>

Appeal against acquittal. Trial Court had summoned the accused in private complaint specifically holding that sufficient material was available to proceed against them but without any further development in the case while exercising jurisdiction under S. 265-K, Cr.P.C. passed order for their acquittal with undue haste negating and nullifying its own previous order. Trial Court could not approbate and reprobate at the same time. Impugned order of acquittal of accused was, consequently, set aside with the direction to Trial Court to proceed with the trial against the accused.<sup>6</sup>

Appreciation of evidence. Specific role had been assigned to both accused and his co-accused. Accused was assigned a fatal injury to deceased whereas injuries attributed to co-accused were on persons of prosecution witnesses. Accused had been assigned a specific role of causing a fire-arm injury on deceased culminating into his death. Prosecution version in respect of accused stood corroborated not only through statement of complainant but also from statements of eye-witnesses as well as medical evidence. All prosecution witnesses had been subjected to lengthy cross-examination but nothing had come on record to discredit their testimony against accused. Accused, in circumstances, was rightly convicted and sentenced. Prosecution had failed to prove participation of co-accused in commission of offence, beyond reasonable doubt as ocular account did not find support from medical evidence. Co-accused, in circumstances, was acquitted of the charge.<sup>7</sup>

Appeal against acquittal. Both sides having sustained injuries in the occurrence, none could unilaterally use the medical evidence as source of aggression. Case being one of free fight on account of dispute of possession of land, none of the parties could claim private defence of property or of person and each accused was individually liable for his own act. Accused was attributed fatal shot to the deceased which was a single shot fired in the free fight and he was, therefore, convicted under S. 302(b), P.P.C. as Tazir and sentenced to undergo imprisonment for life in circumstances. Two other co-accused armed with hatchets remained present without any active participation and were not attributed any injury to the deceased or to any witness whereas the other co-accused was alleged to have raised a Lalkara and made an attempt to scale over the wall of the Haveli when he had been injured by the complainant and a prosecution witness. Said co-accused being not responsible for any overt act, appeal against their acquittal was dismissed.8

Appreciation of evidence. Dying declaration made by the deceased lady did not suffer from any infirmity which appeared to be genuine document containing true narration of the incident fully corroborated by the physical circumstances of the case. Presence of the accused in the house at the time of occurrence was confirmed by an independent prosecution witness who had no reason for false implication of accused in the case. Motive put forth by the deceased in her dying declaration was fully supported by her husband who was real son of the accused and had charged his father for the murder of his wife. Judicial confession made by accused was sufficiently corroborated by the gun recovered at his instance, other incriminating recoveries effected in the case as well as his abscondence after the occurrence and the same was proved to be voluntary. Accused had destroyed the sanctity of relationship of father and daughter ignoring all norms of decency and morality and he himself had tried to molest his daughter-in-law who was supposed to be under his sanctuary. Conviction and sentence of death awarded to accused by Trial Court were confirmed in circumstances.9

Appreciation of evidence. Motive brought on record was not disputed by the accused. Weakness of motive or its absence, however, was immaterial and not fatal to the prosecution case if it was proved by ocular evidence. Eye-witness account of occurrence was not contradicted by medical evidence. Crime empties were found to have been fired from the fire-arms recovered from the possession of the accused. Delay in sending crime weapons to the Expert for examination was of no consequence in the absence of any enmity or ill-will alleged against the prosecution witness. Convictions and sentences of accused were upheld in circumstances.10

Appreciation of evidence. Benefit of doubt. Case of accused was at part with that of co-accused already discharged by the police under S.169, Cr.P.C. as their names appeared to have been given in the F.I.R. with mala fide intention. Despite the arrest of accused from their houses nothing incriminating was recovered from them. Prosecution evidence was not corroborated by any independent piece of evidence and was, therefore, of no value. Prosecution witness during cross-examination had stated that his statement under S. 161, Cr.P.C. was not recorded by the Investigating Officer. Statement of prosecution witness, thus could not be relied upon for want of corroboration with S. 161, Cr.P.C. statement. No confidence inspiring evidence was available on record that the accused had common object with their co-accused in the commission of the offence. High Court having discarded the testimony of injured witness he was not found entitled to any compensation ordered by the Trial Court. Accused were acquitted on benefit of doubt in circumstances.11

Both sentence of death and sentence of life imprisonment for 25 years cannot be awarded for same offence simultaneously.<sup>12</sup>

Offence of qatl-i-amd would not be made out in a case where what preceded immediately before murder occurrence remained shrouded in mystery and dialogues then exchanged by parties were not disclosed. In such case, High Court would be right in altering conviction/death sentence awarded by Trial Court u/s. 302(a) into conviction with sentence of 14 years' R.I. u/s. 302(c).<sup>1</sup>

Acquittal of two accused on charge u/ss. 302/34 would be unquestionable when all the infirmities and flaws pointed by Trial Court assume importance, when considered in light of all-pervading circumstances that both accused were able to establish their innocence during investigating and were consequently placed in column No. 2 of the challan. High Court upholding such acquittal and dismissing complainant's appeal against acquittal.<sup>2</sup>

Appreciation of evidence. Recovery of the dead-body at the instance of accused had been proved by an absolutely independent person besides other prosecution witnesses. Conviction and sentence of accused were maintained in circumstances.<sup>2</sup>

Appreciation of evidence. Eye-witnesses had no enmity or motive for false involvement of accused and they were found present on the spot. Ocular account was corroborated by medical evidence and inspired confidence. Defence version was belied by post-mortem report and was without any substance. Convictions and sentences of accused were maintained, in circumstances.<sup>2</sup>

303. Qatl committed under ikrah-i-tam or ikrah-i-naqis. — Whoever commits qatl, —

(a) under ikrah-i-tam shall be punished with imprisonment for a term which may extend to twenty-five years but shall not be less than ten years and the person causing 'ikrah-i-tam' shall be punished for the kind of qatl committed as a consequence of his ikrah-i-tam; or

(b) under 'ikrah-i-naqis' shall punished for the kind of qatl committed by him and the person causing 'ikrah-i-naqis' shall be punished with imprisonment for a term which may extend to ten years.

304. Proof of qatl-i-amd liable to qisas, etc. — (1) Proof of qatl-i-amd shall be in any of the following forms, namely: —

(a) the accused makes before a Court competent to try the offence a voluntary and true confession of the commission of the offence; or

(b) by the evidence as provided in Article 17 of the Qanun-e-Shahadat, 1984 (P.O. No. 10 of 1984).

(2) The provisions of sub-section (1) shall, mutatis mutandis, apply to a hurt liable to qisas.

COMMENTARY

Trial Courts alarmingly ignore S. 304 and S. 17, Qanun-e-Shahadat (1984) while recording evidence of witnesses. It not only results in miscarriage of justice but also deters superior Courts in rectifying errors or passing appropriate orders. S. 304 plays pivotal role in determining fate of persons found guilty for Qatl-i-amd u/s. 302.3

Case of culpable homicide not amounting to murder. Foul conduct of accused in such case should not occasion a lenient sentence at level of Sessions Court. If that happened to be so, and that High Court recognized the error, such ought to have been corrected by the High Court itself. On complainant's move as a result of High Court's failure to make such correction, Supreme Court invoking its jurisdiction under Art. 187 of constitution (1973), allowing appeal after converting petition for leave to appeal of complainant into appeal and enhancing sentence of seven years' R.I. awarded by Sessions Court into life imprisonment.4

Appreciation of evidence. Eye-witnesses did not depose that they had seen any of the accused either shooting at or killing the deceased. Possibility could not be ruled out that a stray bullet fired by the police might have pierced the door and hit the deceased resulting in his death. Ocular account and the evidence of test identification parade, even if believed, could not establish the murder of deceased by the accused. Accused were acquitted of the charge accordingly.5

Appreciation of evidence. Belated statement of eye-witness before police. Deficient observance of necessary legal formalities in recording of statement of only eye-witness under S. 164, Cr.P.C. Background of bitterness and hostility between accused and father of eye-witness. Ocular account furnished by eye-witness was in conflict with medical evidence produced by prosecution. Statement of eye-witness was totally unworthy of any credit on a capital charge. Dead-body was recovered from a Nala and the same was full of water for many days before recovery. Dead-body was not found in a condition which could show its remaining in water before its discovery or recovery. Prosecution case was contradicted by medical evidence. Conviction of the accused was set aside and he was acquitted in circumstances.1

Appreciation of evidence. Related or interested witness. Corroboration of. No universal rule exists that the evidence of a related or interested witness must be corroborated by some independent evidence. Court can rely on the testimony of an interested witness if it inspires confidence in the event of non-availability of an independent witness.2-3

Murder case. Non-examination of Police Official who had been handed over spent cartridges for delivery to Forensic Science Laboratory. Effect. Leave to appeal was granted to examine effect of non-examination of Police Official who was handed over spent cartridges for delivery to Forensic Laboratory to see whether empties delivered at the Laboratory were the same which were found at the scene of occurrence or had been tampered with.4

Sentence of death awarded to appellant for offence of murder. Validity. Prosecution version was supported by prosecution witnesses that before occurrence common rumor was that appellant and wife of deceased had developed illicit relations, on which father and brother of deceased asked him to turn out appellant and his wife out of his house (where they were living at that time) but he did not care to accede to said advice. As for defence version, although there was no substantial evidence on record to support the same yet admission of appellant that he killed his wife with alleged paramour (deceased) and adhering to such plea throughout would show that there was reasonable prohibitory in his version. Prosecution case and defence version

examined in juxtaposition would suggest that plea of defence might be true and such possibility could not be ruled out altogether. Prosecution witnesses were attracted to the spot after the attack had already been launched and they did not say anything as to what happened prior to attack. Number of injuries on both the deceased, would, however, suggest that there was some serious provocation which caused appellant to attack his wife and alleged paramour. In the circumstances in abundant caution while conviction of appellant was maintained, his sentence of death was altered to that of life imprisonment.<sup>5</sup>

Sentence of death awarded to appellant by Trial Court was confirmed by High Court. Validity. Leave to appeal was granted to re-examine the whole case to determine whether appellant was correctly awarded death sentence in view of his version which he took during trial that he committed offence of murder under grave and sudden provocation.<sup>6</sup>

Appreciation of evidence. One accused had admitted to have caused injuries to the deceased as a result of which his two teeth were broken. Compromise between the families was arrived at on the next day of the occurrence when two similar teeth of the said accused were extracted by a Doctor and thus Qisas had already been executed. Accused had already served about six years of their imprisonment. Sentence of ten years' R.I. awarded to accused by Trial Court was reduced to the term of imprisonment already undergone by them in circumstances.<sup>7</sup>

Appreciation of evidence. Accused in his lengthy statement given under S. 342, Cr.P.C. had admitted about all the relevant facts of the case as alleged by the prosecution except the commission of the offence. Version given by the accused in respect of the manner of firing with which the deceased was hit did not fit in the circumstances of the case. Site, location and direction of the injury in such way did not support the version of accused, rather it could not be explained on any other hypotheses that the deceased was fired upon by somebody else and in the facts of the case it could be only the accused and none else. Conviction and sentence of accused were upheld in circumstances.<sup>8</sup>

Appreciation of evidence. Burden of proof. Prosecution has to prove its case against accused beyond reasonable doubt on the basis of evidence brought on the record and such burden never shifts to any other person or party even if the accused takes inconsistent, contradictory or far-fetched pleas.<sup>9</sup>

Appreciation of evidence. Corroboration. One tainted piece of evidence cannot corroborate another tainted piece of evidence.<sup>10</sup>

Appreciation of evidence. Failure of the Lumberdar or of any member of the complainant party to report the occurrence promptly to the police had raised serious doubt about the authenticity of the subsequently recorded F.I.R. Complainant had made improvements in his statement made in the Court with reference to the F.I.R. lodged by him and his testimony could neither be relied upon for conviction nor pressed into service to corroborate the evidence of any other prosecution witness. Testimony of injured prosecution witness also suffered from very material discrepancies which had raised serious doubt about the incident having taken place in the manner as claimed by prosecution. Accused were acquitted in circumstances.<sup>1</sup>

Free fight. Where in a free fight both parties had come prepared for a trial of strength, each participant was responsible for his own action and there was no question of any right of self-defence and in such cases S. 34, P.P.C. was not applicable.<sup>2</sup>

Appreciation of evidence. Prosecution evidence itself showed that the members of marriage procession were indulging in indiscriminate firing and the possibility of a stray shot, thus fired, having hit the deceased could not be ruled out. Prosecution, held, had failed to prove beyond doubt that the deceased had been killed by a shot fired by the accused from the gun allegedly recovered from him. Accused was acquitted in circumstances.<sup>3</sup>

Rash and negligent act on part of accused must be conclusively established by prosecution. Conviction would be unsustainable when Trial Court tilted on side of prosecution and remained oblivious of major contribution of carelessness by deceased himself.<sup>4</sup>

Driving a vehicle at high speed cannot be considered and taken to be rash and negligent act. Modern technology provides for reasonable safeguard of stopping vehicle within known distance and time. For rash and negligent driving, prosecution is to establish that driver failed to take proper care by omitting to take some action through which he could have avoided accident. Accused cannot be convicted for rash and negligent driving when vehicle was not examined by I.O. by Motor Vehicles Inspector to prove any mechanical defect therein.<sup>5</sup>

Conviction/sentence based on admission of convict after his acquittal of murder charge by disbelieving ocular evidence, would be unexceptionable.<sup>6</sup>

Appreciation of evidence. None of the parties had made any individual of the opposite side its target but in fact they all were in search of a person who stirred common cause of grievance for them. Both sides had sustained injuries and each of them was responsible for his own act. Conviction of accused was upheld in circumstances with reduction in his sentence.<sup>7</sup>

Convicts would be entitled to benefit of doubt when ocular evidence against them which required corroboration remained uncorroborated.<sup>8</sup>

Accident of bus taking 71 lives. Conviction of driver of bus. Challenge to. Whether appellant was driving in a rash and negligent manner. Question of. Appellant was charged under section 304, PPC but was convicted under minor offence under section 304-A of PPC and this could be as provided in Section 238, Cr.P.C. It was negligent on part of appellant to allow co-accused to sit on his wrong side thus becoming a cause of distraction. It was negligence on his part to leave metalled road and take bus on Inspection Path of Dadu Canal knowing fully well that slightest distraction could prove fatal for passengers. Held: It will not be wrong to say that death of 71 passengers was on account of rash and negligent driving of appellant. Appeal dismissed.<sup>9</sup>

Appreciation of evidence. Driving of the bus by the accused at a fast pace on the Katcha road of Inspection Path of the canal certainly amounted to rash and negligent driving which resulted in the bus going out of his control leading to the death of 71 passengers. Accused on seeing the bus going out of his control had jumped out of the moving bus in order to save his own life. Conviction and sentence awarded to accused by Trial Court were upheld in circumstances.<sup>1</sup>

305. Wali. — In case of qatl, the wali shall be—



- (a) the heirs of the victim, according to his personal law; and
- (b) the Government, if there is not heir.

306. Qatl-i-amd not liable to qisas. — Qatl-i-amd shall not be liable to qisas in the following cases, namely: —

- (a) when an offender is a minor or insane;

Provided that, where a person liable to qisas associates himself in the commission of the offence with a person not liable to qisas, with the intention of saving himself from qisas, he shall not be exempted from qisas;

- (b) when an offender causes death of his child or grandchild, how low-so ever; and
- (c) when any wali of the victim is a direct descendant, how low-so-ever, of the offender.

307. Cases in which Qisas for qatl-i-amd shall not be enforced. — (1) Qisas for qatl-i-amd shall not be enforced in the following cases, namely:—

- (a) when the offender dies before the enforcement of qisas;
- (b) when any wali voluntarily and without duress, to the satisfaction of the Court, waives the right of qisas under section 309 or compounds under section 310; and
- (c) when the right of qisas devolves on the offender as a result of the death of the wali of the victim, or on the person who has no right of qisas against the offender.

(2) To satisfy itself that the wali has waived the right of qisas under section 309 or compounded the right of qisas under section 310 voluntarily and without duress the Court shall take down the statement of the wali and such other persons as it may deem necessary on oath and record an opinion that it is satisfied that the waiver or, as the case may be, the composition, was voluntary and not the result of any duress.

#### Illustrations

(i) A kills Z, the maternal uncle of his son B, Z, has no other Wali except D, the wife of A. D has the right of Qisas from A. But if D dies, the right of qisas shall devolve on her son B who is also son of the offender A. B cannot claim qisas against his father. Therefore, the qisas cannot be enforced.

(ii) B kills Z, the brother of her husband A. Z has no heir except A. Here A can claim qisas from his wife B. But if A dies, the right of qisas shall devolve on his son D who is also son of B. The qisas cannot be enforced against B.

#### COMMENTARY

Appreciation of evidence. Eye-witness account furnished by the injured witnesses and other prosecution witnesses was fully corroborated by medical evidence. Neither prosecution witnesses nor the police were shown to have any enmity or motive for false implication of accused. Identification for accused by prosecution witnesses in Court was reliable whereas identification parade held in jail which could serve merely as corroborative evidence and only strength the identification of accused in Court, could not, by itself, established the identity of the accused. Convictions and sentences of accused were upheld in circumstances.2

Special Courts had ceased to be in existence. Provincial Government had entrusted the case for trial to Special Court for Speedy Trial on 20.5.1989, when it had ceased to exist in the eyes of law. Not only the judgment had been passed after the Court had ceased to function in law even the order for trial of the case was passed on a date by which the legal sanction of functioning of the Courts had ceased to be operative. Conviction and sentences of the accused, as such, had been passed by a Court not competent to pass such judgment and the same were set aside accordingly with direction to District Magistrate for submission of the case for trial by a competent Court.3

Appreciation of evidence. Ocular evidence was corroborated by evidence of identification, medical evidence, recoveries and other circumstantial evidence. Case against accused being one of attempt to kill, bringing of medical certificate of injuries on record was not essential. Accused knew that by their firing at the inmates of the car some one could be killed. Conviction and sentence of accused were maintained in circumstances.4-5

Appreciation of evidence Accused had caused an injury on the person of the prosecution witness whose presence at the time of occurrence could not be denied. Conviction for accused was consequently upheld. Accused had undergone imprisonment for more than 5-1/2 years and had faced ordeal and hardships of investigation and trial for the last 12-1/2 years. Sentence awarded to him was thus reduced to the imprisonment already undergone by him.6

Appreciation of evidence. Reduction in sentence. Ocular testimony was in consonance with medical evidence. Recovery of the weapon of offence at the instance of accused had been proved. Chemical Examiner's report regarding the recovered weapons was positive. Conviction of accused was maintained in circumstances. Accused having spend 1-1/2 year in jail and having suffered the agony of a protracted trial, their sentences were reduced accordingly.7

Circumstance that convicts caused simple injuries to injured persons, would call for reduction of sentence of imprisonment from 6 years to 5 years' R.I. and reduction in sentence of fine from Rs.30,000/- to Rs.10,000/- .8

Sentence for offence u/s. 307 reduced to sentence already undergone as convict undergone imprisonment for a period of more than 5½ years and had suffered ordeals/hardships during investigation.9

Appreciation of evidence. Alibi. Accused had pleaded alibi and had proved the same. Accused was acquitted accordingly.1

Appreciation of evidence. Prosecution evidence was not only contrary to the case as set up in the F.I.R. but all the four material witnesses had given different versions of the occurrence

which indicated that the incident did not take place in the manner as alleged by the prosecution. Mashirnama of the "Wardat" was also not prepared by the Investigation Officer in the case. Accused were acquitted in circumstances.<sup>2</sup>

Appreciation of evidence. Complainant according to medical evidence had sustained three fire-arm injuries on his left thigh and two on his right thigh which were simple in nature. Accused, therefore, could not be said to have intended to cause the death of the complainant. Conviction of accused under S. 307, P.P.C. was consequently altered to one under S. 324, P.P.C. and his sentence was reduced accordingly.<sup>3</sup>

Sentence of 7 years' R.I. reduced to 3 years' R.I. with direction to convict to pay Rs.45,000/- as compensation to injured. Reduction ordered on ground that convict had suffered agony of protracted trial for 5 years.<sup>4</sup>

Appreciation of evidence. Accused was previously known to eye-witnesses, thus they could not have faced any difficulty in identifying him. Being a case of single accused, no possibility of substitution was available. F.I.R. was promptly lodged. Being residents of house where occurrence in question had taken place, eye-witnesses examined by prosecution were natural witnesses. Medico-legal Reports clearly showed that injured prosecution witnesses suffered burn injuries. Such circumstances, coupled with evidence of injured prosecution witnesses, was sufficient to prove that injuries were result of acid, as was alleged by prosecution. Motive set up by prosecution against accused also stood established. Accused could not shatter evidence led by prosecution to prove his case. Prosecution case, having stood fully established against accused, he was rightly convicted and properly punished.<sup>5</sup>

Conviction/sentence based on evidence of P.Ws who made a number of improvements in their statements before Court with which they were duly confronted, would be unsustainable when false involvement of convicts is established.<sup>6</sup>

Sentence of seven years' R.I. and fine of five thousand rupees awarded by Special Court (Terrorist Activities) after conviction u/s. 307/34. High Court finding sentence too severe and reducing it to five years' R.I. and three thousand rupees fine.<sup>7</sup>

Medico Legal Report coupled with evidence of injured PWs would be sufficient to prove prosecution case when motive also stands established and accused fails to shatter prosecution case.<sup>8</sup>

Period already undergone in jail by convict alongwith enhanced amount of compensation, shall meet ends of justice by substituting it for sentence of 3 years' R.I.<sup>9</sup>

Different versions by solitary witness given at trial Court without giving explanation for such difference. Held: No reliance could be placed on statement of witness and as such conviction/sentence in such case was liable to be set aside.<sup>1</sup>

Failure of prosecution to produce independent witness would invalidate conviction/sentence against convicts who were found innocent during Police investigation.<sup>2</sup>

Participation of convicts who were armed only with sotas and raised only proverbial lalkaras would be doubtful entitling them to acquittal by having benefit of doubt.<sup>3</sup>

Conviction based on ocular evidence supported by motive and medical evidence, would be unexceptionable when defence plea does not appear to be reasonable or plausible.<sup>4</sup>

Sentence of four years' R.I. would not be harsh when victim of assault has lost right arm due to injury sustained by him.<sup>5</sup>

Accused had also made ineffective firing on another witness. Accused was acquitted of the charge for such firing.<sup>6</sup>

Suo motu revisional jurisdiction, exercise of. Ocular evidence had no independent corroboration. Eye-witnesses although had specifically attributed the injury to the accused, yet the doctor had admitted in cross-examination that the same could be caused with a single fire attributed to co-accused. Accused who had not filed any appeal against his conviction was acquitted on benefit of doubt in circumstances.<sup>1</sup>

Sentence of 7 years' R.I. awarded by Trial Court would merit reduction to one already undergone when convict has remained in physical internment for 2/3rd of sentence.<sup>2</sup>

Appreciation of evidence. Accused had contended that inquiry sheets and the inquest reports of the injured and deceased had not been proved and exhibited by the prosecution which had lent support to the fact that F.I.R. was concocted after the preliminary investigation at the spot and the report of Forensic Expert having neither been exhibited nor put to the accused, could not be read as evidence against the accused. Contentions were repelled because failure to establish or prove the injury sheets and inquest reports was not fatal to the prosecution case, especially so when the post-mortem report had been duly proved by examining the doctor. Not necessary to prove report of Forensic Expert by producing the author of the same. Taking into consideration the murder of members of complainant and the accused parties and the fact that firing had been attributed to at least three persons, it could not be said that the prosecution evidence was belied on the ground that certain injuries could not be caused from a particular point. Contention that the prosecution story was belied by the circumstantial evidence was repelled. Corroboration was amply furnished by the recoveries of the weapons of offence from the accused coupled with the fact that according to the report of Forensic Expert two empties of cartridges were fired from the guns which were recovered from the accused. Act of the accused neither fell within the ambit of self-defence of the property nor of the person. Mitigating circumstances in favour of the accused existed which showed that capital punishment awarded to them, was not justified. Judgment of Shariat Court was altered and sentence was awarded accordingly.<sup>3</sup>

Sentence of five years' R.I. awarded by Trial Magistrate, would merit reduction to sentence already undergone in a case where convict has remained in jail for more than two years and has paid amount of compensation u/s. 544-A, CrPC to victim.<sup>4</sup>

Intention to kill would be missing when fire-arm injuries are inflicted on non-vital parts of victim's body. In such case, conviction/sentence recorded u/s. 307 would merit alteration into conviction/sentence u/s. 324.<sup>5</sup>

Offence u/ss. 307/34 would not be compounded when accused have not been granted UFW in respect of charge for offences u/ss. 307/34.6

308. Punishment in qatl-i-amd not liable to qisas, etc. — (1) Where an offender guilty of qatl-i-amd is not liable to qisas under section 306 or the qisas is not enforceable under clause (c) of section 307, he shall be liable to diyat;

Provided that, where the offender is minor or insane, diyat shall be payable either from his property or, by such person as may be determined by the Court;

Provided further that where at the time of committing qatl-i-amd the offender being a minor, had attained sufficient maturity of being insane, had a lucid interval, so as to be able to realize the consequences of his act, he may also be punished with imprisonment of either description for a term which may extend to fourteen years as ta'zir;

Provided further that, where the qisas is not enforceable under clause (c) of section 307, the offender shall be liable to diyat only if there is any wali other than offender and if there is no wali other than the offender, he shall be punished with imprisonment of either description for a term which may extend to fourteen years as ta'zir.

(2) Notwithstanding anything contained in sub-section (1), the Court, having regard to the facts and circumstances of the case in addition to the punishment of diyat, may punish the offender with imprisonment of either description for a term which may extend to fourteen years, as ta'zir.

#### COMMENTARY

Mere reliance on school leaving certificate is not enough to come to a definite conclusion as to age of minor at time of commission of offence. Additionally for that purpose, the ossification test or any other medical test should also be got conducted and the age of the convict determined in accordance therewith and then the case decided accordingly.<sup>7</sup>

309. Waiver (Afw) ( ) of qisas in qatl-i-amd. — (1) In the case of qatl-i-amd, and adult sane wali may, at any time and without any compensation, waive his right of qisas:

Provided that the right of qisas shall not be waived —

(a) where the Government is the wali; or

(b) where the right of qisas vests in a minor or insane.

(2) Where a victim has more than one wali any one of them may waive his right of qisas;

Provided that the wali who does not waive the right of qisas shall be entitled to his share of diyat.

(3) Where there are more than one victim, the waiver of the right of qisas by the wali of one victim shall not affect the right of qisas of the wali of the other victim.

(4) Where there are more than one offenders, the waiver of the right of qisas against one offender shall not affect the right of qisas against the other offender.

310. Compounding of qisas (Sulh) in qatl-i-amd. — (1) In the case of qatl-i-amd, an adult sanewali may, at any time on accepting badal-i-sulh, compound his right of qisas;

Provided that giving a female in marriage shall not be a valid badal-i-sulh.

(2) Where a wali is a minor or an insane, the wali of such minor or insane wali may compound the right of qisas on behalf of such minor or insane wali:

Provided that the value of badal-i-sulh shall not be less than the value of diyat.

(3) Where the Government is the wali, it may compound the right of qisas:

Provided that the value of badal-i-sulh shall not be less than the value of diyat.

(4) Where the badal-i-sulh is not determined or is a property or a right the value of which cannot be determined in terms of money under Shari'ah, the right of qisas shall be deemed to have been compounded and the offender shall be liable to diyat.

(5) badal-i-sulh may be paid or given on demand or on a deferred date as may be agreed upon between the offender and the wali.

Explanation. — In this section, badal-i-sulh means the mutually agreed compensation according to Shari'ah to be paid or given by the offender to a wali in cash or in kind or in the form of moveable or immovable property.

311. Ta'zir after waiver or compounding of right of qisas in qatl-i-amd. — Notwithstanding anything contained in section 309 or section 310, where all the wali do not waive or compound the right of qisas, or keeping in view the principle of fasad-fil-arz, the court may, in its discretion having regard to the facts and circumstances of the case, punish an offender against whom the right of qisas has been waived or compounded with imprisonment of either description for a term of which may extend to fourteen years as ta'zir.

Explanation. — For the purpose of this section, the expression fasad-fil-arz shall include the past conduct of the offender, or whether he has any previous convictions, or the brutal or shocking manner in which the offence has been committed which is outrageous to the public conscience, or if the offender is considered a potential danger to the community.

#### COMMENTARY

Convict cannot be punished by way of Tazir u/s. 311 after accepting compromise when nothing exists on record to justify such punishment.<sup>8</sup>

312. qatl-i-amd after waiver or compounding of qisas. — Where a wali commits qatl-i-amd of a convict against whom the right of qisas has been waived under section 309 or compounded under section 310, such wali shall be punished with—

(a) qisas, if he had himself waived or compounded the right of qisas against the convict or had knowledge of such waiver of composition by another wali; or

(b) diyat, if he had no knowledge of such waiver or composition.

313. Right of qisas in qatl-i-amd. — (1) Where there is only one wali, he alone has the right of qisas in qatl-i-amd but, if there are more than one, the right of qisas vests in each of them.

(2) If the victim—

(a) has no wali, the Government shall have the right of qisas; or

(b) has no wali other than a minor or insane or one of the wali is a minor or insane, the father or if he is not alive the paternal grandfather of such wali shall have the right of qisas on his behalf:

Provided that, if the minor or insane wali has no father or paternal grandfather, how high-so-ever, alive and no guardian has been appointed by the Court, the Government shall have the right of qisas on his behalf.

314. Execution of qisas in qatl-i-amd. — (1) Qisas in qatl-i-amd shall be executed by a functionary of the Government by causing death of the convict as the Court may direct.

(2) Qisas shall not be executed until all the wali are present at the time of execution, either personally or through their representatives authorized by them in writing in this behalf: Provided that where a wali or his representative fails to present himself on the date, time and place of execution of qisas after having been informed of the date, time and place as certified by the Court, an officer authorized by the Court shall give permission for the execution of qisas and the Government shall cause execution of qisas in the absence of such wali.

(3) If the convict is a woman who is pregnant, the Court may, in consultation with an authorized medical officer, postpone the execution of qisas upto a period of two years after the birth of the child and during this period she may be released on bail on furnishing of security to the satisfaction of the Court or, if she is not so released she shall be dealt with as if sentenced to simple imprisonment.

315. Qatl shibh-i-amd. — Whoever, with intent to cause harm to the body or mind of any person, causes the death of that or of any other person by means of a weapon or an act which in the ordinary course of nature is not likely to cause death is said to commit qatl-shibh-i-amd.

Illustration

A in order to cause hurt strikes Z with a stick or stone which in the ordinary course of nature is not likely to cause death. Z dies as a result of such hurt. A shall be guilty of qatl shibh-i-amd.

316. Punishment for qatl shibh-i-amd. — Whoever commits qatl shibh-i-amd shall be liable to diyat and may also be punished with imprisonment of either description for a term which may extend to fourteen years as ta'zir.

317. Person committing qatl debarred from succession. — Where a person committing qatl-i-amd or qatl shibh-i-amd is an heir or a beneficiary under a will, he shall be debarred from succeeding to the estate of the victim as an heir or a beneficiary.

318. Qatl-i-khata. — Whoever, without any intention to cause death of, or cause harm to, a person causes death of such person, either by mistake of act or by mistake of fact, is said to commit qatl-i-khata.

#### Illustrations

(a) A aims at a deer but misses the target and kills Z who is standing by A is guilty of qatl-i-khata.

(b) A shoots at an object to be a boar but it turns out to be a human being. A is guilty of qatl-i-khata.

319. Punishment for qatl-i-khata. — Whoever commits qatl-i-khata shall be liable to diyat:

Provided that, where qatl-i-khata is committed by any rash or negligent act, other than rash or negligent driving, the offender may, in addition to diyat, also be punished with imprisonment of either description for a term which may extend to five years as ta'zir.

#### COMMENTARY

Defence counsel in the High Court, after considering the factual position of the case had conceded the charge of "Qatl-i-Khata" having been proved against the accused and, therefore, it could not be argued before the Supreme Court that the evidence on record fell short of proving the guilt. Prosecution evidence and defence evidence had established beyond doubt that the incident had occurred in the manner as alleged by the prosecution. Beside mistake of act or mistake of fact "Qatl-i-Khata" could be committed by rash or negligent act and the act of accused of roaming about with a loaded pistol and embracing the deceased in that position amounted to a negligent act. Impugned judgment did not suffer from any legal flaw. Leave to appeal was refused to accused by Supreme Court accordingly.<sup>9</sup>

320. Punishment for qatl-i-khata by rash or negligent driving. — Whoever commits qatl-i-khata by rash or negligent driving shall, having regard to the facts and circumstances of the case, in addition to diyat, be punished with imprisonment of either description for a term which may extend to ten years.

321. Qatl-bis-Sabab. — Whoever, without any intention to cause death of, or cause harm to any person, does any unlawful act which becomes a cause for the death of another person, is said to commit qatl-bis-sabab.

#### Illustration

A unlawfully digests a pit in the thoroughfare, but without any intention to cause the death of, or harm to any person. B while passing from there falls in it and is killed. A has committed qatl-bis-sabab.



## COMMENTARY

An offender having no intention to cause death of or cause harm to any person commits any unlawful act which causes death would be guilty of qatl-bis-sabab under S. 321. Qatl-bis-sabab as defined in S. 321 is substantially distinguishable from provisions relating to definition of qatl-i-amd as given in S. 300. Application of either of the two sections, S. 300 or S. 321, for fixing liability depends upon the facts and circumstances of each case.<sup>10</sup>

322. Punishment for qatl-bis-sabab. — Whoever commits qatl-bis-sabab shall be liable to Diyat.

323. Value of Diyat. — (1) The Court shall, subject to the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah and keeping in view the financial position of the convict and the heirs of the victim, fix the value of diyat which shall not be less than the value of thirty thousand six hundred and thirty grams of silver.

(2) For the purpose of sub-section (1) the Federal Government shall, by notification in the official Gazette, declare the value of silver, on the first day of July each year or on such date as it may deem fit, which shall be the value payable during a financial year.

324. Attempt to commit Qatl-i-amd. Whoever does any act with such intention or knowledge, and under such circumstances, that, if he by that act caused qatl, he would be guilty of Qatl-i-Amd, shall be punished with imprisonment of either description for a term which may extend to ten years; and shall also be liable to fine, and, if hurt is caused to any person by such act, the offender shall, in addition to the imprisonment and fine as aforesaid, be liable to the punishment provided for the hurt caused:

Provided that, where the punishment for the hurt is Qisas which is not executable, the offender shall be liable to arsh and may also be punished with imprisonment of either description for a term which may extend to seven years.

## COMMENTARY

Accused involved in a case u/ss. 324, 337-A(i) and 337-F(i) as medical report showed that injuries were caused on person of complainant by hard blunt weapon.<sup>2</sup>

Statement of injured witness which is fully supported by recovery of pistol, evidence of motive and medical evidence would safe basis for conviction u/s. 324 when no palpable reason is shown for substitution of convict for real assailants. It was held that substitution is rare phenomenon and possibility is further reduced when injured person himself is a witness and makes statement regarding his injury.<sup>3</sup>

For determining culpability u/s. 324, the nature of act done, the intention, the knowledge under which act was done and the circumstances under which act was perpetrated should be considered. There is no abstract criterion/formula for ascertaining the intention of offender which can only be inferred from external acts and surrounding circumstances. It is provided in S. 300 that if an act is done either with intention of causing death or with knowledge that the act is so imminently dangerous that it must in all probability cause death, causes death, then the offender would be liable for offence of qatl-i-amd.<sup>4</sup>

325. Attempt to commit suicide. Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

#### COMMENTARY

Non-examination of Radiologist would invalidate conviction/sentence u/s. 325. In such case, conviction/sentence u/s. 325 would merit alteration into conviction/sentence u/s. 323.5

Defence version was corroborated by medical evidence and when put in juxtaposition with prosecution allegations appeared to be more plausible. Sessions Court had given cogent reasons for extending benefit of doubt to accused and its judgment did not suffer from any misreading of evidence or lack of jurisdiction. Acquittal was maintained in circumstances.<sup>6</sup>

Unsubstantiated plea of false involvement cannot displace conviction/sentence based on ocular given by injured of broad daylight occurrence.<sup>7</sup>

Appreciation of evidence. Radiologist had not been examined by prosecution to prove the charge of grievous hurt against the accused. Conviction of accused under Ss. 325/34, P.P.C. was consequently altered to Ss. 323/34, P.P.C and their sentence of imprisonment was reduced to the period already undergone by them. Fine imposed on the accused was also set aside.<sup>8</sup>

Appeal against acquittal. Compromise. Injured prosecution witnesses had effected a compromise with the accused and had pardoned them in the name of Almighty Allah. Section 325, P.P.C. being compoundable with permission of Court, even if appeal against acquittal had succeeded the persons suffering grievous hurt could still compound the offence with Court's permission. Order of acquittal passed by Trial Court was maintained in circumstances.<sup>9</sup>

326. Thug. — Whoever shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with qatl, is a thug.

327. Punishment. — Whoever is a thug, shall be punished with imprisonment for life and shall also be liable to fine.

328. Exposure and abandonment of child under twelve years by parent or person having care of it. — Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation. — This section is not intended to prevent the trial of the offender of qatl-i-amd or qatl-i-shibh-i-amd or qatl-bis-sabab, as the case may be, if the child dies in consequence of the exposure.

329. Concealment of birth by secret disposal of dead body. — Whoever by secretly burying or otherwise disposing of the dead body of a child whether such child dies before or after or during his birth, intentionally conceals or endeavours to conceal the birth shall be punishable

with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

330. Disbursement of diyat. — The diyat shall be disbursed among the heirs of the victim according to their respective shares in inheritance:

Provided that, where an heir foregoes his share, the diyat shall not be recovered to the extent of his share.

331. Payment of Diyat. — (1) The diyat may be made payable in lump-sum or in instalments spread over a period of three years from the date of the final judgment.

(2) Where a convict fails to pay diyat or any part thereof within the period specified in subsection (1), the convict may be kept in jail and dealt with in the same manner as if sentenced to simple imprisonment until the diyat is paid full or may be released on bail if he furnishes security equivalent to the amount of diyat to the satisfaction of the Court.

(3) Where a convict dies before the payment of diyat or any part thereof, it shall be recovered from his estate.

332. Hurt. — (1) Whoever causes pain, harm, disease, infirmity or injury to any person or impairs, disables or dismembers any organ of the body or part thereof of any person without causing his death, is said to cause hurt.

(2) The following are the kinds of hurt: —

(a) Itlaf-i-udw

(b) Itlaf-i-salahiyyat-i-udw

(c) shajjah

(d) jurh ; and

(e) all kinds of other hurts.

333. Itlaf-i-udw. — Whoever dismembers, amputates, severs any limb or organ of the body of another person is said to cause Itlaf-i-udw.

334. Punishment for itlaf-i-udw. — Whoever by doing any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person causes itlaf-i-udw of any person, shall, in consultation with the authorized medical officer, be punished with qisas, and if the qisas is not executable keeping in view the principles of equality in accordance with the Injunctions of Islam, the offender shall be liable to arsh and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir.

335. Itlaf-i-salahiyyat-i-udw. — Whoever destroys or permanently impairs the functioning, power or capacity of an organ of the body of another person, or causes permanent disfigurement is said to cause itlaf-i-salahiyyat-i-udw.

336. Punishment for itlaf-i-salahiyyat-i-udw. — Whoever, by doing any act with the intention of causing hurt to any person, or with the knowledge that he is likely to cause hurt to any person, causes itlaf-i-salahiyyat-i-udw of any person, shall, in consultation with the authorized medical officer, be punished with qisas and if the qisas is not executable, keeping in view the principles of equality in accordance with the Injunctions of Islam, the offender shall be liable to arsh and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir.

337. Shajjah. — (1) Whoever causes, on the head or face of any person, any hurt which does not amount to itlaf-i-udw or itlaf-i-salahiyyat-i-udw, is said to cause shajjah.

(2) The following are the kinds of shajjah, namely:—

- (a) Shajjah-i-khafifah ;
- (b) Shajjah-i-mudihaha ;
- (c) Shajjah-i-hashimah ;
- (d) Shajjah-i-munaqqilah
- (e) Shajjah-i-ammah ; and
- (f) Shajjah-i-damighah ;

(3) Whoever causes shajjah, —

- (i) without exposing bone of the victim, is said to cause shajjah-i-khafifah;
- (ii) by exposing any bone of the victim without causing fracture, is said to cause shajjah-i-mudihah;
- (iii) by fracturing the bone of the victim, without dislocating it, is said to cause shajjah-i-hashimah;
- (iv) by causing fracture of the bone of the victim and thereby the bone is dislocated, is said to cause shajjah-i-munaqqilah;
- (v) by causing fracture of the skull of the victim so that the wound touches the membrane of the brain, is said to cause shajjah-i-ammah;
- (vi) by causing fracture of the skull of the victim and the wound ruptures the membrane of the brain is said to cause shajjah-i-damighah.

337A. Punishment of Shajjah. — Whoever, by doing any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, causes —

(i) shajjah-i-khafifah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to two years as Ta'zir;

(ii) shajjah-i-mudihah to any person, shall, in consultation with the authorized medical officer, be punished with Qisas and if the Qisas is not executable keeping in view the principles of equality in accordance with the Injunctions of Islam, the convict shall be liable to Arsh which shall be five per cent of the Diyat and may also be punished with imprisonment of either description for a term which may extend to five years as Ta'zir;

(iii) shajjah-i-hashimah to any person, shall be liable to Arsh which shall be ten per cent of the Diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as Ta'zir;

(iv) shajjah-i-munaqqilah to any person, shall be liable to Arsh which shall be fifteen per cent of the Diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as Ta'zir;

(v) shajjah-i-ammah to any person, shall be liable to Arsh which shall be one-third of the Diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as Ta'zir; and

(vi) shajjah-i-damighah to any person, shall be liable to Arsh which shall be one-half of Diyat and may also be punished with imprisonment of either description for a term which may extend to fourteen years as Ta'zir.

337B. Jurh. — (1) Whoever causes on any part of the body of a person, other than the head or face, a hurt which leaves a mark of the wound, whether temporary or permanent, is said to cause jurh.

(2) Jurh , is of two kinds, namely: —

(a) Jaifah ; and

(b) Ghayr-jaifah

337C. Jaifah. — Whoever causes jurh in which the injury extends to the body cavity of the trunk, is said to cause jaifah.

337D. Punishment for jaifah. — Whoever by doing any act with the intention of causing hurt to a person or with the knowledge that he is likely to cause hurt to such person, causes jaifah to such person, shall be liable to arsh which shall be one-third of the diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir.

337E. Ghayr-jaifah. — (1) Whoever causes jurh which does not amount to jaifah, is said to cause ghayr-jaifah.

(2) The following are the kinds of ghayr-jaifah, namely: —

(a) damihah

(b) badi'ah

(c) mutalahimah

(d) mudihah

(e) hashimah ; and

(f) munaqqilah ;

(3) Whoever causes ghayr-jaifah—

(i) in which the skin is ruptured and bleeding occurs, is said to cause damiyah;

(ii) by cutting or incising the flesh without exposing the bone, is said to cause badi'ah;

(iii) by lacerating the flesh, is said to cause mutalahimah;

(iv) by exposing the bone, is said to cause mudihah;

(v) by causing fracture of a bone without dislocating it, is said to cause hashimah; and

(vi) by fracturing and dislocating the bone, is said to cause munaqqilah.

337F. Punishment of ghayr-jaifah. — Whoever by doing any act with the intention of causing hurt to any person, or with the knowledge that he is likely to cause hurt to any person, causes:

(i) damihah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to one year as ta'zir;

(ii) badi'ah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to three years as ta'zir;

(iii) mutalahimah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to three years as ta'zir;

(iv) mudihah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to five years as ta'zir;

(v) hashimah to any person, shall be liable to daman and also be punished with imprisonment of either description for a term which may extend to five years as ta'zir; and

(vi) munaqqilah to any person, shall be liable to daman and they also be punished with imprisonment of either description for a term which may extend to seven years as ta'zir.

337G. Punishment for hurt by arsh or negligent driving. — Whoever causes hurt by rash or on negligent driving shall be liable to arsh or daman specified for the kind of hurt caused and may also be punished with imprisonment of either description for a term which may extend to five years as ta'zir.

337H. Punishment for hurt by rash or negligent act. — (1) Whoever causes hurt by rash or negligent act, other than rash or negligent driving, shall be liable to arsh or daman specified for the kind of hurt caused and may also be punished with imprisonment of either description for a term which may extend to three years as ta'zir.

(2) Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

337I. Punishment for causing hurt by mistake (khata). — Whoever causes hurt by mistake (khata) shall be liable to arsh or daman specified for the kind of hurt caused.

337J. Causing hurt by means of a poison. — Whoever administers to, or causes to be taken by, any person, any poison or any stupefying, intoxicating or unwholesome drug, or such other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause hurt may, in addition to the punishment or arsh or daman provided for the kind of hurt caused, be punished, having regard to the nature of the hurt caused, with imprisonment of either description for a term which may extend to ten years.

337K. Causing hurt to extort confession, or to compel restoration of property. — Whoever causes hurt for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of any offence or misconduct, or for the purpose of constraining the sufferer, or any person interested in the sufferer, to restore, or to cause the restoration of, any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security shall, in addition to the punishment of qisas, arsh or daman, as the case may be, provided for the kind of hurt caused, be punished, having regard to the nature of the hurt caused, with imprisonment of either description for a term which may extend to ten years as ta'zir.

337L. Punishment for other hurt. — (1) Whoever causes hurt, not mentioned hereinbefore, which endangers life or which causes the sufferer to remain in severe bodily pain for twenty days or more or renders him unable to follow his ordinary pursuits for twenty days or more, shall be liable to daman and also be punished with imprisonment of either description for a term which may extend to seven years.

(2) Whoever causes hurt not covered by sub-section (1) shall be punished with imprisonment of either description for a term which may extend to two years, or with daman, or with both.

337M. Hurt not liable to qisas. — Hurt shall not be liable to qisas in the following cases, namely:

(a) when the offender is a minor or insane:

Provided that he shall be liable to arsh and also to ta'zir to be determined by the Court having regard to the age of offender, circumstances of the case and the nature of hurt caused;

(b) when an offender at the instance of the victim causes hurt to him:

Provided that the offender may be liable to ta'zir provided for the kind of hurt caused by him;

(c) when the offender has caused itlaf-i-udw of a physically imperfect organ of the victim and the convict does not suffer from similar physical imperfection of such organ;

Provided that the offender shall be liable to arsh and may also be liable to ta'zir provided for the kind of hurt caused by him; and

(d) when the organ of the offender liable to qisas is missing:

Provided that the offender shall be liable to arsh and may also be liable to ta'zir provided for the kind of hurt caused by him.

#### Illustrations

(i) A amputates the right ear of Z, the half of which was already missing. If A's right ear is perfect, he shall be liable to arsh and not qisas.

(ii) If in the above illustration. Z's ear is physically perfect but without power of hearing. A shall be liable to qisas because the defect in Z's ear is not physical.

(iii) If in illustration (i) Z's ear is pierced. A shall be liable to qisas because such minor defect is not physical imperfection.

337N. Cases in which qisas for hurt shall not be enforced. — (1) The qisas for a hurt shall not be enforced in the following cases, namely: —

(a) when the offender dies before execution of qisas;

(b) when the organ of the offender liable to qisas is lost before the execution of qisas:

Provided that offender shall be liable to arsh, and may also be liable to ta'zir provided for the kind of hurt caused by him;



(c) when the victim waives the qisas or compounds the offence with badl-i-sulh; or

(d) when the right of qisas devolves on the person who cannot claim qisas against the offender under this Chapter:

Provided that the offender shall be liable to arsh, if there is any wali other than the offender, and if there is no wali other than the offender he shall be liable to ta'zir provided for the kind of hurt caused by him.

(2) Notwithstanding anything contained in this Chapter, in all cases of hurt, the Court may, having regard to the kind of hurt caused by him, in addition to payment of arsh, award ta'zir to an offender who is a previous convict, habitual or hardened, desperate or dangerous criminal.

337O. Wali in case of hurt. — In the case of hurt the wali shall be—

(a) the victim:

Provided that, if the victim is a minor or insane, his right of qisas shall be exercised by his father or paternal grand-father, how-high-so-ever;

(b) the heirs of the victim, if the later dies before the execution of qisas; and

(c) the Government, in the absence of the victim or the heirs of the victim.

337P. Execution of qisas for hurt. — (1) Qisas shall be executed in public by an authorized medical officer who shall before such execution examine the offender and take due care so as to ensure that the execution of qisas does not cause the death of the offender or exceed the hurt caused by him to the victim.

(2) The wali shall be present at the time of execution and if the wali or his representative is not present, after having been informed of the date, time and place by the Court an officer authorized by the Court in this behalf shall give permission for the execution of qisas.

(3) If the convict is a woman who is pregnant, the Court may, in consultation with an authorized medical office, postpone the execution of qisas upto a period of two years after the birth of the child and during this period she may be released on bail on furnishing of security to the satisfaction of the Court or, if she is not so released, shall be dealt with as if sentence to simple imprisonment.

337Q. Arsh for single organs. — The arsh for causing itlaf of an organ which is found singly in a human body shall be equivalent to the value of diyat.

Explanation. — Nose and tongue are included in the organs which are found singly in a human body.

337R. Arsh for organs in pairs. — The arsh for causing Itlaf of organs found in a human body in pairs shall be equivalent to the value of diyat and if itlaf is caused to one of such organs the amount of arsh shall be one-half of the diyat:

Provided that, where the victim has only one such organ or his other organ is missing or has already become incapacitated the arsh for causing itlaf of the existing or capable organ shall be equal to the value of diyat.

Explanation. — Hands, feet, eyes, lips and breasts are included in the organs which are found in a human body in pairs.

337S. Arsh for the organs in quadruplicate. — (1) The arsh for causing itlaf of organs found in a human body in a set of four shall be equal to—

- (a) one-fourth of the diyat, if the itlaf is one of such organs;
- (b) one-half of the diyat, if the itlaf is of two of such organs;
- (c) three-fourth of the diyat, if the itlaf is of three of such organs; and
- (d) full diyat, if the itlaf is of all the four organs.

Explanation. — Eyelids are organs which are found in a human body in a set of four.

337T. Arsh for fingers. — (1) The arsh for causing itlaf of a finger of a hand or foot shall be one-tenth of the diyat.

(2) The arsh for causing itlaf of a joint of a finger shall be one-thirteenth of the diyat:

Provided that where the itlaf is of a joint of a thumb, the arsh shall be one-twentieth of the diyat.

337U. Arsh for teeth. — (1) The arsh for causing itlaf of a tooth, other than a milk tooth, shall be one-twentieth of the diyat.

Explanation. — The impairment of the portion of a tooth outside the gum amounts to causing itlaf of a tooth.

(2) The arsh for causing itlaf of twenty or more teeth shall be equal to the value of diyat.

(3) Where the itlaf is of a milk tooth, the accused shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to one year:

Provided that, where itlaf of a milk tooth impedes the growth of a new tooth, the accused shall be liable to arsh specified in sub-section (1).

337V. Arsh for hair. — (1) Whoever uproots —

(a) all the hair of the head, beard, mustaches, eyebrow eyelashes or any other part of the body shall be liable to arsh equal to diyat and may also be punished with imprisonment of either description for a term which may extend to three years as ta'zir;

(b) one eyebrow shall be liable to arsh equal to one-half of the diyat; and

(c) one eyelash, shall be liable to arsh equal to one-fourth of the diyat.

(2) Where the hair of any part of the body of the victim are forcibly removed by any process not covered under sub-section (1), the accused shall be liable to daman and imprisonment of either description which may extend to one year.

337W. Merger of arsh. — (1) Where an accused causes more than one hurt, he shall be liable to arsh specified for each hurt separately;

Provided that, where—

(a) hurt is caused to an organ, the accused shall be liable to arsh for causing hurt to such organ and not for arsh for causing hurt to any part of such organ; and

(b) the wounds join together and form a single wound, the accused shall be liable to arsh for one wound.

#### Illustrations

(i) A amputates Z's fingers of the right hand and then at the same time amputates that hand from the joint of his wrist. There is separate arsh for hand and for fingers. A shall, however, be liable to arsh specified for hand only.

(ii) A twice stabs Z on his thigh. Both the wounds are so close to each other that they form into one wound. A shall be liable to arsh for one wound only.

(2) Where, after causing hurt to a person, the offender causes death of such person by committing qatl liable to diyat, arsh shall merge into such diyat;

Provided that the death is caused before the healing of the wound caused by such hurt.

337X. Payment of arsh. — (1) The arsh may be made payable in a lump sum or in instalments spread over a period of three years from the date of the final judgment.

(2) Where a convict fails to pay arsh or any part thereof within the period specified in sub-section (1), the convict may be kept in jail and dealt with in the same manner as if sentenced to simple imprisonment until arsh is paid in full or may be released on bail if he furnishes security equal to the amount of arsh to the satisfaction of the Court.

(3) Where a convict dies before the payment of arsh or any part thereof, it shall be recovered from his estate.

337Y. Value of daman. — (1) The value of daman may be determined by the Court keeping in view—

(a) the expenses incurred on the treatment of victim;

(b) loss or disability caused in the functioning or power of any organ; and

(c) the compensation for the anguish suffered by the victim;

(2) In case of non-payment of daman, it shall be recovered from the convict and until daman is paid in full to the extent of his liability, the convict may be kept in jail and dealt with in the same manner

as if sentenced to simple imprisonment or may be released on bail if he furnishes security equal to the amount of daman to the satisfaction of the Court.

337Z. Disbursement of arsh or daman. — The arsh or daman shall be payable to the victim or, if the victim dies, to his heirs according to their respective shares in inheritance.

338. Isqat-i-Haml. — Whoever causes a woman with child whose organs have not been formed, to miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman, or providing necessary treatment to her, is said to cause 'isqat-i-haml'.

Explanation. — A woman who causes herself to miscarry is within the meaning of this section.

338A. Punishment for Isqat-i-haml. — Whoever causes isqat-i-haml shall be liable to punishment as ta'zir—

(a) with imprisonment of either description for a term which may extend to three years, if isqat-i-haml is caused with the consent of the woman; or

(b) with imprisonment of either description for a term which may extend to ten years, if isqat-i-haml is caused without the consent of the woman;

Provided that, if as a result of isqat-i-haml, any hurt is caused to woman or she dies, the convict shall also be liable to the punishment provided for such hurt or death as the case may be.

338B. Isqat-i-janin. — Whoever causes a woman with child some of whose limbs or organs have been formed to miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman, is said to cause isqat-i-janin.

Explanation. — A woman who causes herself to miscarry is within the meaning of this section.

338C. Punishment for Isqat-i-janin. — Whoever causes Isqat-i-janin shall be liable to —

(a) one-twentieth of the diyat if the child is born dead;

(b) full diyat if the child is born alive but dies as a result of any act of the offender; and

(c) imprisonment of either description for a term which may extend to seven years as ta'zir;

Provided that, if there are more than one child in the womb of the woman, the offender shall be liable to separate diyat or ta'zir, as the case may be, for every such child:

Provided further that if, as a result of isqat-i-janin, any hurt is caused to the woman or she dies, the offender shall also be liable to the punishment provided for such hurt or death, as the case may be.

338D. Confirmation of sentence of death by way of qisas or ta'zir, etc. — A sentence of death awarded by way of qisas or ta'zir, or a sentence of qisas awarded for causing hurt, shall not be executed, unless it is confirmed by the High Court.

338E. Waiver or compounding of offences. — (1) Subject to the provisions of this Chapter and section 345 of the Code of Criminal Procedure, 1898 (V of 1898), all offences under this Chapter may be waived or compounded and the provisions of sections 309 and 310 shall, mutatis mutandis, apply to the waiver or compounding of such offences;

Provided that, where an offence has been waived or compounded, the Court may, in its discretion having regard to the facts and circumstances of the case, acquit or award ta'zir to the offender according to the nature of the offence.

(2) All questions relating to waiver or compounding of an offence or awarding of punishment under section 310, whether before or after the passing of any sentence, shall be determined by Trial Court;

Provided that where the sentence of qisas or any other sentence is waived or compounded during the pendency of an appeal, such questions may be determined by the Appellate Court.

338F. Interpretation. — In the interpretation and application of the provisions of this Chapter, and in respect of matter ancillary or akin thereto, the Court shall be guided by the Injunctions of Islam as laid down in the Holy Quran and Sunnah.

338G. Rules. — The Government may, in consultation with the Council of Islamic Ideology, by notification in the official Gazette, make such rules as it may consider necessary for carrying out the purposes of this Chapter.

338H. Saving. — Nothing in this Chapter, except sections 309, 310 and 338E, shall apply to cases pending before any Court immediately before the commencement of the Criminal Law (Second Amendment) Ordinance, 1990 (VII of 1990), or to the offences committed before such commencement.]

6[CHAPTER XVI-A]

## OF WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT

339. Wrongful restraint. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception: The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

#### Illustration

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

340. Wrongful confinement. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

#### Illustrations

(a) A causes Z to go within a walled space, and locks Z in, Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(b) A places men with fire-arms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

341. Punishment for wrongful restraint. Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

342. Punishment for wrongful confinement. Whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

343. Wrongful confinement for three or more days. Whoever wrongfully confines any person for three days or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

344. Wrongful confinement for ten or more days. Whoever wrongfully confines any person for ten days, or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

345. Wrongful confinement of person for whose liberation writ has been issued. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any term of imprisonment to which he may be liable under any other section of this Chapter.

346. Wrongful confinement in secret. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or the place of such confinement may not be known to or discovered by any such person or police servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term

which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement.

347. Wrongful confinement to extort property or constrain to illegal act. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

348. Wrongful confinement to extort confession or compel restoration of property. Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

#### Of Criminal Force and Assault

349. Force. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

First: By his own bodily power.

Secondly: By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly: By inducing any animal to move, to change its motion, or to cease to move.

350. Criminal force. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

#### Illustrations.

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other

action on any person's part. A has, therefore, intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(b) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has, therefore, used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(c) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has, therefore, used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(d) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has, therefore, intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up to water against Z's clothes, or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(f) A intentionally pulls up a woman's veil. Here A intentionally uses force to her, and if he does so without her consent intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(g) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling (sic), therefore, intentionally used force to Z' if he has done this without Z's consent intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

(h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

351. Assault. Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.



Explanation. Mere words do not amount to an assault. But the words which a person uses may give to his gesture or preparation such a meaning as may make those gestures or preparations amount to an assault.

#### Illustrations

(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z, A has committed an assault.

(b) A begins to unloose the muzzle of a ferocious dog, intending, or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z, A has committed an assault upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture, accompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

352. Punishment for assault or criminal force otherwise than on grave provocation. Whoever assails or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation. Grave and sudden provocation will not mitigate the punishment for the offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise the right of private defence.

Whether the provocation was grave and sudden enough to (sic) offence, is a question of fact.

353. Assault or criminal force to deter public servant from discharge of his duty. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### COMMENTARY

Appreciation of evidence. Accused had resorted to firing and even if it was for the purpose of saving their own skin, then too, they did deter the police party from discharging their duty. Conviction and sentence of accused were maintained in circumstances.<sup>9</sup>

354. Assault or criminal force to woman with intent to outrage her modesty. Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

1[354-A. Assault or use of criminal force to woman and stripping her of her clothes. Whoever assaults or uses criminal force to any woman and strips her of her clothes and, in that condition exposes her to the public view, shall be punished with death or with imprisonment for life,, and shall also be liable to fine.]

#### COMMENTARY

Sentence, reduction in. Victim child had neither been examined by the Doctor nor produced before the Court to determine whether she was able to give evidence or not. Age of the accused according to the Doctor was 13 years. Accused had remained in jail for two months as an under-trial prisoner and a convict. Sentence of one year's simple imprisonment awarded to accused was reduced to the period already undergone by him in circumstances.<sup>2</sup>

355. Assault or criminal force with intent to dishonour person, otherwise than on grave provocation. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

356. Assault or criminal force in attempt to commit theft of property carried by a person. Whoever assaults or uses criminal force to any person in attempting to commit theft on any property which that person is then wearing or carrying shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

357. Assault or criminal force in attempting wrongfully to confine a person. Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

358. Assault or criminal force on grave provocation. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Explanation. The last section is subject to the same explanation as section 352.

#### Of Kidnapping, Abduction, Slavery and Forced Labour

359. Kidnapping. Kidnapping is of two kinds. Kidnapping from Pakistan and kidnapping from lawful guardianship.

360. Kidnapping from Pakistan. Whoever conveys any person beyond the limits of Pakistan without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from Pakistan.

361. Kidnapping from lawful guardianship. Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person lawful guardianship.

Explanation. The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception. This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to be lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

362. Abduction. Whoever, by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

363. Punishment of kidnapping. Whoever kidnaps any person from Pakistan or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

364. Kidnapping or abducting in order to murder. Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine.

#### Illustrations

(a) A kidnaps Z from Pakistan, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

4[364-A. Kidnapping or abducting a person under the age of ten. Whoever kidnaps or abducts any person under the age of ten, in order that such person may be murdered or subjected to grievous hurt, or slavery, or to the lust of any person or may be so disposed of as to be put in danger of being murdered or subjected to grievous hurt, or slavery, or to the lust of any person, shall be punished with death or with imprisonment for life or with rigorous imprisonment for a term which may extend to fourteen years and shall not be less than seven years.]

365. Kidnapping or abducting with intent secretly and wrongfully to confine person. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully

confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

5[365-A. Kidnapping or abduction for extorting property, valuable security, etc. Whoever kidnaps or abducts any person for the purpose of extorting from the person kidnapped or abducted, or from any person interested in the person kidnapped or abducted, any property whether movable or immovable, or valuable security, or to compel any person to comply with any other demand, whether in cash or otherwise for obtaining release of the person kidnapped or abducted, shall be punished with 6[death or] imprisonment for life and shall also be liable to forfeiture of property.]

#### COMMENTARY

Acquittal recorded by High Court on appeal against conviction/sentence under Ss. 365A/34 recorded by Special Court (Anti-Terrorist Activities). Supreme Court finding that it was a case of non-reading and misreading of evidence as substantial and irrefutable evidence was ignored and disbelieved by High Court on ground which were not sustainable in law. Supreme Court finding that dicta laid down by Supreme Court in cases relating to kidnapping/abduction for ransom were neither followed nor referred to and instead convicts were acquitted by High Court on technical pleas. As grave miscarriage of justice had resulted from acquittal by High Court, Supreme Court accepting appeal, setting aside acquittal recorded by High Court and upholding the conviction/sentence recorded by Special Court.6a

Conviction/sentence for abduction recorded by Special Court (STA). High Court on appeal setting aside conviction/sentence and ordering acquittal of convict. Supreme Court, on appeal with its leave, re-appraising the entire evidence for prosecution and defence, holding acquitted accused of offence u/s. 365A, setting aside acquittal recorded by High Court and convicting/sentencing acquitted accused u/s. 365A. It was held that believing statements of complainant and abductee supported by recovery of ransom amount and absence of motive of these witnesses as regards acquitted accused with weakness of statement by acquitted accused to absolve him from liability. High Court was not justified to interference with conclusions about conviction/sentence of acquitted accused recorded by Special Court (STA).7

Identification of accused would not be needed when offence of abduction u/s. 365A is proved by irrefutable testimony of abductee and his son. Conviction recorded by Trial Court on such evidence would be unquestionable.8

Death sentence awarded to appellant altered to life imprisonment as his case was identical with other appellants who were awarded life imprisonment by Trial Court.9

Cases of abduction for ransom. In such cases, it is not necessary that all culprits must have collectively done all criminal acts together from stage of abduction till extortion of money. In such cases mostly, the work is divided. Abduction is done by a few of accused, place of confinement is guarded by others and ransom is extorted by one or two of them. This is done under a planning with object to extort money. Therefore, punishment u/s. 365A would be the same irrespective of the role played by each of them.10

Appeal by two appellants against death sentence awarded to them after their conviction u/ss. 365A, 302/34 by Special Court (Suppression of Terrorist Activities) for kidnapping a minor boy

of 9 years of age and killing him. High Court holding that prosecution had succeeded in proving its case on basis of retracted judicial and extra-judicial confessional statements of two appellants which were corroborated by recovery of dead-body at pointation of two appellants. High Court not feeling inclined to interfere with death sentences recorded against two appellants as a minor boy of 9 years age had been brutally murdered by two appellants.<sup>1</sup>

366. [Repealed by Offence of Zina (Enforcement of Hudood) Ordinance, VII of 1979].

366-A. Procurement of minor girl. Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

366-B. Importation of girl from foreign country. Whoever imports into Pakistan from any country outside Pakistan any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, <sup>2</sup>[shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine],

and whoever with such intent or knowledge imports from any State in Pakistan into any other part of Pakistan any such girl who has with the like intent or knowledge been imported into Pakistan whether by himself or by another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

367. Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery <sup>3</sup>[x x x x x] or knowing it to be likely that such person will be so subjected or disposed of shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

368. Wrongfully concealing or keeping in confinement, kidnapped or abducted person. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

369. Kidnapping or abducting child under ten years with intent to steal from its person. Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

370. Buying or disposing of any person as a slave. Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

371. Habitual dealing in slaves. Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with imprisonment for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

372. [Repealed by Ordinance VII of 1979.]

373. [Repealed by Ordinance VII of 1979.]

374. Unlawful compulsory labour. 4[(1)] Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

5[(2)] Whoever compels a prisoner of war or a protected person to serve in the Armed Forces of Pakistan shall be punished with imprisonment of either description for a term which may extend to one year.

Explanation. In this section the expression "prisoner of war" and "protected person" shall have the same meanings as have been assigned to Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, ratified by Pakistan on the second June, 1951.]

Of Rape

375. [Repealed by Ordinance VII of 1979.]

376. [Repealed by Ordinance VII of 1979.]

OF UNNATURAL OFFENCE

377. Unnatural offences. Whoever voluntarily has carnal intercourses against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which 7[shall not be less than two years nor more than ten years], and shall also be liable to fine.

Explanation. Penetration is sufficient to constitute the carnal intercourses necessary to the offence described in this section.

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CHAPTER XVII

OF OFFENCES AGAINST PROPERTY

Of Theft

378. Theft. Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1. A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2. A moving effected by the same act which effects the severance may be a theft.

Explanation 3. A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4. A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5. The consent mentioned in the definition may be expressed or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

#### Illustrations

(a) A cuts down a tree on Z's ground with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b) A puts a bait for dogs in his pockets, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent A has committed theft as soon as Z's dog had begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d) A being Z's servant and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not, therefore, be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it. A commits theft.

(g) A finds a ring lying on the high-road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection. A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits the theft.

(i) A delivers his watch to Z, a jeweler, to be regulated, Z carries it to his shop. A, not owing to the jeweler, and debt for which the jeweler might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k) Again if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent not having paid what he borrowed on the watch, he commits theft, though the watch is his own property inasmuch as he takes it dishonestly.

(l) A takes an article belonging to Z, out of Z's possession without Z's consent with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly. A has, therefore, committed theft.

(m) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z her husband. Here it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression. A has not committed theft.

(o) A is the paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z and to be such property as she has no authority from Z to give. If A takes the property dishonestly, he commits theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of Z's possession. Here, as A does not take dishonestly, he does not commit theft.

379. Punishment for theft. Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

380. Theft in dwelling house, etc. Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.



## COMMENTARY

Appeal against acquittal. Parties had effected a compromise as a result whereof the case property had been restored to the complainant. No case, thus, was made out for setting aside the acquittal of accused. Appeal against acquittal was dismissed accordingly.<sup>8</sup>

381. Theft by clerk or servant of property in possession of master. Whoever being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

9[381A. Theft of a car or other motor vehicles. — Whoever commits theft of a car or any other motor vehicle, including motor-cycle, scooter and Tractor, shall be punished with imprisonment of either description for a term which may extend to seven years and with fine not exceeding the value of the stolen car or motor vehicle.

10[Explanation. — Theft of an electric motor of a tube-well or transformer shall be within the meaning of this section.]

382. Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft. Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to committing of such theft, or in order the effecting of his escape after the committing of such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

### Illustrations

(a) A commits theft on property in Z's possession, and, while committing this theft, he has a loaded pistol under his garment having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

### Of Extortion

383. Extortion. Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

### Illustrations

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z, to pay certain money to Z, A signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's fields unless A will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A, Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion.

384. Punishment for extortion. Whoever, commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

385. Putting person in fear of injury in order to commit extortion. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

386. Extortion by putting a person in fear of death or grievous hurt. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

387. Putting person in fear of death or of grievous hurt, in order to commit extortion. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

388. Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc. Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with imprisonment for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with imprisonment for life.

389. Putting person in fear of accusation of offence, in order to commit extortion. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with imprisonment for life or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with imprisonment for life.

## Of Robbery and Dacoity

390. In all robbery there is either theft or extortion.

When theft is robbery. Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carrying away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt, or wrongful restraint, or fear of instant death or of instant hurt or of instant wrongful restraint.

When extorting is robbery. Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, or instant hurt, or of instant wrongful restraint to that person, or to some other person, and by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation: The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

### Illustrations

(a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high-road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the high-road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse, Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has, therefore, committed robbery on Z.

(d) A obtains property from Z by saying — "Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion, punishable as such; (sic) is not robbery, unless Z is put in fear of the instant death of his child.

391. Dacoity. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons (sic) committing or attempting to commit a robbery and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or raiding is said to commit "dacoity".

392. Punishment for robbery. Whoever commits robbery shall be punished with rigorous imprisonment for a term which 9[shall not be less than three years nor more than] ten years, and shall also be liable to fine; and, if the robbery be committed on the highway 1[\* \* \* \* \*], the imprisonment may be extended to fourteen years.

## COMMENTARY

Conviction based on evidence of eye-witnesses who were independent and police officers had acted in straightforward manner, would be unquestionable. Sentence of ten years' R.I. awarded by Trial Court would be reduced to seven years' R.I. on ground that convicts were of very young age.<sup>2</sup>

Appeal against acquittal in a bank dacoity case u/ss. 392/34. Acquittal based on ground that in site plan presence of acquitted accused was not shown outside bank premises. Held: This aspect of matter justified acquittal and reasoning adopted by Trial Court in its acquittal judgment was sound and merited affirmance by High Court with dismissal of appeal against acquittal.<sup>3</sup>

Constitutional petition. Remission in sentence granted by Government, award of. Notifications issued by the Government from time to time had excluded the convicts from the benefit of getting remission in their sentence who had been convicted for the offence of dacoity punishable under S. 395, P.P.C. and not the convicts of the offence under S. 392, P.P.C. Accused having been convicted under Ss. 392/34, P.P.C., the said embargo was not attracted to their case which fell within the purview of such notifications. Superintendent of the Jail concerned was consequently directed to grant remission to the accused as admissible under the notifications issued by the Government from time to time. Constitutional petition was accepted accordingly.<sup>4</sup>

Charge framed by Trial Court in the case did not comply with mandatory requirements of S. 222(1), Cr.P.C. which had caused prejudice to accused. Status. Convictions and sentences of accused were set aside in circumstances and case was remanded to Trial Court for de nova trial after framing charge in accordance with law.<sup>5</sup>

Quashing of proceedings. Accused had been placed in column No. 2 of the challan submitted in the Court. Factual aspect of the matter about the non-existence of the material against the accused for their conviction could also be analysed and adjudicated upon by the Court of Ilaqa Magistrate. Accused were, therefore, directed to move an application under S. 249-A, Cr.P.C. before the Ilaqa Magistrate who was also the Trial Court. Petition was disposed of accordingly.<sup>6</sup>

393. Attempt to commit robbery. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

394. Voluntarily causing hurt in committing robbery. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which 8[shall not be less than four years or more than] ten years, and shall also be liable to fine.

395. Punishment for dacoity. Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which 9[shall not be less than four years nor more than] ten years and shall also be liable to fine.

## COMMENTARY

Appeal before High Court. Maintainability. Challan had been submitted in the Court against the accused under Ss. 393 & 454, P.P.C. read with S. 17(2) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979. Sessions Court after framing the charge and conducting the trial found that the case did not fall within the purview of an offence liable to Hadd and it consequently convicted the accused under S. 394, P.P.C. and sentenced him to undergo four years; R.I. as Ta'zir with fine. Observation made by Trial court in the impugned judgment that "no evidence was available to bring the case within the purview of Hudood Laws", had no doubt led to a confusion, otherwise the sentence had squarely been awarded to accused under S. 20 of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 and in view of S. 24 of the said Ordinance the same was appealable to the Federal Shariat Court as the sentence had exceeded two years' R.I. Article 203-G of the Constitution had also created a bar in this respect conferring exclusive jurisdiction on Federal Shariat Court in such matter. High Court, therefore, was not competent to hear and decide the appeal which was directed to be returned to the accused for presenting the same before the Federal Shariat Court.<sup>10</sup>

396. Dacoity with murder. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of these persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which 1[shall not be less than four years nor more than] ten years, and shall also be liable to fine.

397. Robbery or dacoity, with attempt to cause death or grievous hurt. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

## COMMENTARY

Appreciation of evidence. Reduction in sentence. Ocular testimony was consistent and credible which was furnished by natural witnesses. Accused were caught red-handed at the spot from where the police arrested them. F.I.R. was promptly lodged. Accused were proved to have committed the robbery after making forcible entry by putting the inmates of the house under the fear of death or grievous hurt and actually caused Chhuri injuries to one of them. Conviction of accused was maintained in circumstances with substantial reduction in their sentence having been found severe.<sup>2</sup>

398. Attempt to commit robbery or dacoity when armed with deadly weapon. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

399. Making preparation to commit dacoity. Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

## COMMENTARY

Appreciation of evidence. Despite the raid having been planned well in advance no explanation was furnished by the prosecution for not associating public witnesses available at the time of recovery in recovery proceedings and thus the alleged recovery of the weapons from the accused through Police Officers, therefore, was not established. Past history of involvement of accused in dacoity cases despite having been alleged in the complaint had not been proved on record. Recovery of weapons having not been proved, accused could not be said to have been making preparation to commit dacoity especially when no evidence was produced to make out the hearing of any type of conversation amongst them in such regard. Hatching of conspiracy which was included in the offence of making preparation to commit dacoity, was missing in the prosecution case. Accused were acquitted in circumstances. Since non-appealing co-accused were also entitled to the same benefit they were also acquitted as all citizens were equal before law and deserved the equal protection of law as provided by Art. 25 of the Constitution.<sup>3</sup>

Appreciation of evidence. No satisfactory evidence was available on record to prove that the accused either had prepared themselves or had been making preparation to commit dacoity. Accused were acquitted in circumstances.<sup>4</sup>

400. Punishment for belonging to gang of dacoits. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

401. Punishment for belonging to gang of thieves. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

402. Assembling for purpose of committing dacoity. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

#### COMMENTARY

Mere assembly of five or more armed persons at one place will not give rise to any presumption that they had assembled there to commit dacoity.<sup>5</sup>

#### 6[ Of Hijacking

402-A. Hijacking. Whoever unlawfully, by the use or show of force or by threats of any kind, seizes, or exercise control of an aircraft, is said to commit hijacking.

402-B. Punishment for Hijacking. Whoever commits, or conspires or attempts to commit, or abets the commission of hijacking shall be punished with death or imprisonment for life, and shall also be liable to forfeiture of property and fine.

402-C. Punishment for harbouring Hijacker, etc. Whoever knowingly harbours any person whom he knows or has reason to believe to be a person who is about to commit or has committed or abetted an offence of hijacking, or knowingly permits any such persons to meet or assemble in any place or premises in his possession or under his control, shall be punished with death or imprisonment for life, and shall also be liable to fine.]

#### Of Criminal Misappropriation of Property

403. Dishonest misappropriation of property. Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### Illustrations

(a) A takes property belonging to Z out of Z's possession in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c) A and B, being joint owners of a horse. A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1. A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

#### Illustration

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2. A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner who has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it, it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

#### Illustrations

(a) A finds a rupee on the high-road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(b) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person on whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(d) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(e) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

(f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

#### COMMENTARY

Constitution of Pakistan, 1973, Art. 185(3). Respondent had filed a complaint under S. 403, P.P.C. against appellant at Karachi for misappropriation of her dowry articles. Appellant's petition challenging the jurisdiction of the Court at Karachi to decide the matter was dismissed by High Court. Leave to appeal was granted to appellant to consider whether the Court at Karachi had jurisdiction to try the complaint filed by respondent against him.<sup>6a</sup>

Complainant had challenged the vires of the Sessions Court's order setting aside the finding of the Magistrate that a prima facie case had been made out in the complaint. Complainant, however, on reconsideration during the course of hearing requested for withdrawal of Constitutional petition with a view to urging the legal arguments before the Court concerned. Constitutional petition was dismissed as withdrawn accordingly.<sup>7</sup>

404. Dishonest misappropriation of property possessed by deceased person at the time of his death. Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three



years and shall also be liable to fine; and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

#### Illustration

Z, dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

#### Of Criminal Breach of Trust

405. Criminal breach of trust. Whoever, being in any (sic) entrusted with property, or with any dominion over property, (sic) misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust."

#### Illustrations

(a) A, being executor to the will of deceased person dishonestly disobeys the law which directs him to divide, the effect according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper, Z, going on a journey entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Karachi, is agent for Z, residing at Lahore. There is an express or implied contract between A and Z, that all sum remitted by Z to A shall be invested by A, according to Z's direction Z remits a lakh of rupees to A, with directions to Z to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage, to hold shares in the Bank of Punjab disobeys Z's directions and buys shares in the Bank of Punjab for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, as revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

## COMMENTARY

Breach of trust. To establish a charge of criminal breach of trust, prosecution must prove not only entrustment of or domain over property but also that accused either dishonestly misappropriated, converted, used or disposed of that property himself or that he willfully suffered some other persons to do so.<sup>7a</sup>

406. Punishment for criminal breach of trust. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to 8[seven] years, or with fine, or with both.

## COMMENTARY

Criminal breach of trust by a company. Principle that a company is distinct legal entity from its directors, does not warrant conclusion that commission of a criminal offence by a company is inconsistent with mens rea on part of its directors. An allegation of a criminal offence against a company can only mean that company's directors and/or officers have committed offence. In order to decide question who has committed offence. Court has always to pierce veil of incorporation. It cannot possibly be said that merely accused persons were directors of company, they could not be guilty of a breach of trust.<sup>8a</sup>

Sentence, reduction in. Accused according to trial Court were not proved to have deprived the complainant of the amount and they had been convicted solely on the ground of having the knowledge that the complainant was carrying the amount. Accused had already undergone almost a year's imprisonment as under-trial prisoners and as convicts, which could adequately meet the ends of justice. Sentence of three years' R.I. awarded to accused was reduced to the term of imprisonment already undergone by them in circumstances.<sup>9</sup>

407. Criminal breach of trust by carrier, etc. Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

## COMMENTARY

Onus of proof. Onus of proving misappropriation is on the prosecution and there may be a presumption from non-delivery of goods that the goods had been misappropriated. The existence of facts which suggest an explanation would be sufficient for giving the accused the benefit of doubt.<sup>9a</sup>

408. Criminal breach of trust by clerk or servant. Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

## COMMENTARY

Appraisal of evidence. Misappropriation of the amount by the accused was supported by the pay-in-slip and the counterfoil signed by him and no other person. Judgment of High Court was not found to have suffered from any flaw or legal infirmity. Conviction and sentence of accused were upheld in circumstances.9b

Appreciation of evidence. Accused was found innocent during police investigation. Circumstantial evidence against accused was only to the extent that he was the Accountant and it was his duty to disburse salaries under the direction and control of the complainant. Accused in his capacity as such had received the amount from the Bank and made part payment of the salaries and kept the remaining amount in the office. Had the complainant, who was responsible for the safe custody of the amount, made all the necessary arrangements in this regard, occurrence could have been avoided. Complainant had not charged the accused in the F.I.R., nor she had suspected him for the commission of the offence till she was proceeded against and removed from her service. No ocular or circumstantial evidence connecting the accused with the commission of the offence was available on record. Trial Court in such circumstances was not justified to have relied upon the bare statement of the complainant for conviction of the accused. Prosecution had failed to prove its case against the accused. Accused was acquitted accordingly.1

409. Criminal breach of trust by public servant, or by banker, merchant or agent. Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### COMMENTARY

When public servant admitted entrustment, failure to prove entrustment by producing official document is of no consequence. 1a

Conviction/sentence based on admission for temporary retention of money. Held: Even if admission was under misconception, conviction was unexceptionable in circumstances of case.1b

Prevention of Corruption Act (II of 1947), S. 5(2). Sentence. Concerned authorities without whose active connivance criminal misappropriation could not have been made, trying to help accused after registration of case. Accused likely to be dealt with departmentally in consequence of his conviction. Scope of reduction in sentence of accused, held, was present in circumstances. Sentence of accused, therefore, was reduced.1c

Appeal to High Court against conviction with sentence of 7 years' R.I. plus fine of Rs. 500,000/- recorded by Sessions Court. Conviction challenged with main contention that Trial Court had no jurisdiction in this case, and was not competent to try the case. High Court holding that in circumstances of the case this contention carried no merit as Trial Court had jurisdiction to try the case. High Court dismissing appeal as prosecution had fully proved its case against appellant beyond any shadow of doubt.2

Appreciation of evidence. Evidence regarding payment of money to the accused for purchase of Railway tickets was not free from doubt on account of contradictory prosecution evidence. Possibility that on being found to be ticket-less by the raiding party, the complainant leveled allegation of receipt of Rs. 100 by the Ticket Collector (accused) and non-issuance of tickets could not be ruled out. Accused was acquitted in circumstances.<sup>3</sup>

Expunction of condemnatory remarks. Trial Court had absolved the accused of every responsibility about the charges framed against him by acquitting him in the case and thereafter there was hardly any justification either to condemn him or give a positive finding that he was guilty of negligence specially in the absence of any notice to him. Remarks given by Trial Court against the accused in its judgment were ordered to be expunged accordingly.<sup>4</sup>

Appreciation of evidence. No convincing evidence was produced by prosecution about the dishonest misappropriation of birds or conversion of the same to his own use by the accused or their disposal. Mere entrustment of the property to the accused and its shortage was not enough to establish guilt of dishonest misappropriation and mere existence of adverse presumption could not be equated with the establishment of guilt. Accused was acquitted on benefit of doubt in circumstances.<sup>5</sup>

Burden of proof. Despite existence of circumstances giving rise to adverse presumption, the onus probandi would still rest squarely on the shoulders of the prosecution.<sup>6</sup>

Criminal misappropriation. Failure to discharge responsibility for safe custody of property would not per se amount to establish an offence within the meaning of S. 409, P.P.C., nor an offence under S 5(2) of the Prevention of Corruption Act, 1947.<sup>7</sup>

V.P. Clerk of Post Office. Misappropriation of Government money. Offence of. Conviction/sentence. Challenge to. Contention, that sanction for prosecution of public servant u/s. 6(5) of Pakistan Criminal Law Amendment Act, 1958 had not been filed with challan and, therefore, Court had not addressed a letter to concerned department/ministry but letter sent by Trial Court was addressed to Ministry of Interior whereas appellant was serving under Ministry of Communication, therefore, on failure to reply to this letter on part of Govt., it should not be presumed that sanction was deemed to have been accorded after expiry of sixty days period as letter was not properly communicated. Work of anti-corruption law had been assigned to Ministry of Interior by Federal Government in case of Federal Government employee and therefore, Special Judge Anti-Corruption had to address his letter to Federal Govt, through Ministry of Interior for prosecution of public servants of grade-16 and below. Appellant is admittedly a public servant of below grade-16, and, therefore, Ministry of Interior, Government of Pakistan, was competent authority to accord sanction for prosecution. Contention has no substance to hold that sanction presumed to have been accorded, was not legal. Witnesses have made it clear that appellant had misappropriated amount and appellant has not been able to either show it from his defence that he had in fact paid back that amount to relevant person or had not misappropriated same. Appeal dismissed.<sup>8</sup>

Once misappropriation is proved alongwith the fact of entrustment or dominion over the case property, the fact that the misappropriated property was not recovered would not by itself be enough to establish the innocence of the accused and the accused would be liable for breach of trust irrespective of the value of the misappropriated property.<sup>9</sup>

Conviction/sentence would be unsustainable when entrustment was not proved and trial Court was of two minds about guilt of convict. High Court in such case accepting appeal, setting aside conviction/sentence and ordering convict's acquittal.<sup>10</sup>

Proof of offence. Essentials. Appreciation of evidence. Accused were proved to have been entrusted with the property over which they had complete control and were dealing as such with the same by reason of their duties and, therefore, were fully responsible to account for it. Accused by misappropriating the B.B.N. sheets had knowingly performed a part in the process of counterfeiting the currency notes as they very well knew that on the said sheets counterfeit currency notes would be printed which were established on the record to have been so printed and used as genuine. Accused were also proved to have supplied B.B.N. sheets for the purpose of counterfeiting currency notes. Recoveries effected in the case were according to law. Conviction and sentence of the accused were maintained in circumstances.<sup>1</sup>

Appreciation of evidence. Uncorroborated extra-judicial confession. Evidentiary value. Conviction of accused on the testimony of the prosecution witness before whom he had allegedly made extra-judicial confession was not justified as the same had remained uncorroborated on material facts. Accused was acquitted in circumstances.<sup>2</sup>

Appeal against acquittal. Evidence against accused was of his retracted judicial confession recorded by a Magistrate. Major part of the said confession was exculpatory and pertained to the year which was not under consideration in the matter. Appeal against his acquittal was dismissed in circumstances.<sup>3</sup>

Applicability of S. 409, PPC. For the applicability of S. 409, P.P.C. it is absolutely necessary to show that entrustment of property was made within the meaning of such provision. No specific mode is prescribed for creating a trust under S. 409, P.P.C. and the same, therefore, can be created by a specific order and also be reason of duties assigned to a public functionary.<sup>4</sup>

#### COMMENTARY

Appreciation of evidence. Conviction of accused under S.409, P.P.C. was illegal as no charge thereunder had been framed and neither any evidence of entrustment and breach of trust was available on the record, nor the trial Court has put any question to them regarding entrustment and breach of trust in their statements under S. 342, Cr.P.C. Technical Officer, Anti-Corruption had visited the site in the absence of the accused without any prior notice to them for site inspection and found the work still in progress with some material lying there. Bills paid to the Contractor (accused) were advance running bills and not the final bills and he had not been cross-examined by the State counsel as to whether he had completed the work or the same has been left incomplete and, therefore, the plea taken by accused might be true. Neither the F.I.R., nor the bills, inspection report and the Mashirnamas were produced in the case and the same were stated by the witnesses to have been produced in another case which amounted to an illegality. Accused were acquitted on benefit of doubt in circumstances.<sup>5</sup>

Documents produced in another case, consideration of. Court can take into consideration the evidence produced in a particular case and no reference could be made to the documents which were produced in some other case.<sup>6</sup>

## Of Receiving of Stolen Property

410. Stolen property. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as "stolen property" whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without Pakistan. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

411. Dishonestly receiving stolen property. Whoever dishonestly receives or retains, any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

### COMMENTARY

Accused neither claimed property recovered from him to be his own nor gave explanation as to how the property was possessed by him. The argument that property was not proved to be stolen was of no avail to accused.<sup>3</sup>

Punishment cannot exceed one-half of maximum provided for substantive offence. Maximum sentence under S. 411/414 is 3 years. Sentence of 2 years' R.I. under S. 411/414 read with S. 511 was found illegal.<sup>4</sup>

Appreciation of evidence. Decision of the Panchayat and the prosecution evidence in support thereof was inadmissible in evidence having been based on hearsay and by taking cognizance of the constitution of the Panchayat and its decision, trial Court had abdicated its jurisdiction to determine the guilt or innocence in favour of an agency without jurisdiction to determine the guilt or innocence in favour of an agency without jurisdiction and legal competence which had badly prejudiced the case of the accused and because of such illegality the entire trial stood vitiated. Stolen property (animal) had been taken into custody under S. 550, Cr.P.C. a month prior to the lodging of the complaint, therefore, the whole prosecution version had been built up upon a presumption of recovery of stolen property without there being any legal justification for the same and in fact there was no recovery in pursuance to the registration of the case itself. Accused was acquitted in circumstances.<sup>5</sup>

412. Dishonestly receiving property stolen in the commission of a dacoity. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

413. Habitually dealing in stolen property. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with

imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

414. Assisting in concealment of stolen property. Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### Of Cheating

415. Cheating. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person <sup>6</sup>[or any other person] in body, mind, reputation or property, is said to "cheat".

Explanation. A dishonest concealment of facts is a deception within the meaning of this section.

#### Illustrations

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z, into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A, intentionally deceives Z, into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money; A not intending to repay it. A cheats.

(g) A, intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable to only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

#### COMMENTARY

Cheating. False certificate of residence obtained by misrepresentation is not "property", and that appellant was not liable to be convicted under S. 419 or S. 420.6a

The word "person" in S. 415 covers "Government". If a criminal by cheating a Government servant induces either him or another Government servant to deliver to him certain Government property, the act of criminal is covered by S. 415.6b

416. Cheating by personation. A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation. The offence is committed whether the individual personated is a real or imaginary person.

#### Illustrations

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheat by pretending to be B, a person who is deceased. A cheats by personation.

417. Punishment for cheating. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one years, or with fine, or with both.

418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose trust in the transaction to which the cheating relates, he was bound either by law, or by legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

419. Punishment for cheating by personation. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to 7[seven] years, or with fine, or with both.

#### COMMENTARY



Appreciation of evidence. Record did not bear any evidence to show that the entries in the forged Nikahnama were made by the accused or the same was registered by any of them. Record also did not show that any one of the accused had become witness of the Nikah or had impersonated as another person. Accused, thus, were not proved to have in any way abetted any of the offences committed by the main co-accused. Accused were acquitted in circumstances.<sup>8</sup>

420. Cheating and dishonestly inducing delivery of property. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### COMMENTARY

Dishonourment of cheque in a case where civil liability existed before issuance of cheque would not constitute an offence punishable under S. 420.<sup>8a</sup>

Constitutional petition. Criminal proceedings. Competency of. Complainant in her application filed before Executive Magistrate/Incharge Complaint Cell, alleged that mutation of land owned by her had been fraudulently got attested by petitioners on her behalf. Magistrate conducted inquiry into the matter, cancelled the mutation and directed complainant to lodge F.I.R. against the petitioners under Ss. 419/420, P.P.C. Complainant had already instituted civil suit in which she had challenged the validity of the mutation. Dispute between the parties being of civil nature. Magistrate had no jurisdiction to entertain the application of complainant. Orders passed by Magistrate were declared to be illegal by High Court in exercise of Constitution jurisdiction.<sup>1</sup>

Constitution petition. Quashing of F.I.R. Accused persons were wholesale dealers of Ghee. Complainant was Ghee Corporation, manufacturing Ghee. Credit facility, against security in shape of cash and immovable property was advanced to the accused persons by the Corporation. Corporation due to mismanagement of accounts claimed certain excessive amount from the accused persons. Civil suit of rendition of accounts was filed by the accused persons. Matter was subjudice when the Corporation got a criminal case registered against the accused persons and the same was cancelled by Magistrate. Corporation lodged another F.I.R. which also met the same fate. Lastly, the Corporation got a case registered with Federal Investigation Agency on the same subject-matter against the accused persons. Police commenced proceedings of arrest in haste, to harass, humiliate and coerce the accused persons. Validity. Had the Corporation be purely a private concern, facility to launch extraordinary and coercive measures and criminal proceedings could never be thought of. Action and proceedings were perfunctory and was misuse of official position by repeated endeavours wherefrom no positive outcome would be entailed. Action was palpably fallacious, based on wrong notions, patently misconceived, unwarranted and could not be countenanced, allowed to perpetuate and continue. Petition was allowed and F.I.R. was quashed in circumstances.<sup>2</sup>

Of Fraudulent Deeds and Disposition of Property

421. Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors. Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

422. Dishonestly or fraudulently preventing debt being available for creditors. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debt or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

423. Dishonest or fraudulent execution of deed of transfer containing false statement of consideration. Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration, for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

424. Dishonest or fraudulent removal or concealment of property. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### Of Mischief

425. Mischief. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

Explanation 1. It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person to any person by injuring any property, whether it belongs to that person or not.

Explanation 2. Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and other jointly.

#### Illustrations

(a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water into an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to Z with the intention of thereby causing wrongful loss to Z, A has committed mischief.

(d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(e) A having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(f) A, causes a ship to be cast away, intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

(g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

426. Punishment for mischief. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

427. Mischief causing damage to the amount of fifty rupees. Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

428. Mischief by killing or maiming animal of the value of ten rupees. Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

429. Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees. Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

430. Mischief by injury to works to irrigation or by wrongfully diverting water. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are properly, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

431. Mischief by injury to public road, bridge, river or channel. Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for traveling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

432. Mischief by causing inundation or obstruction to public drainage attended with damage. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

433. Mischief by destroying, moving or rendering less useful a light-house or sea-mark. Whoever commits mischief by destroying or moving any light-house or other light used as a self-mark, or any sea-mark or buoy or other thing placed as a guide for navigator, or by any act which renders any such light-house, sea-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

434. Mischief by destroying or moving, etc., a land-mark fixed by public authority. Whoever commits mischief by destroying or moving any land mark fixed by the authority of a public servant, or by any act which renders such land mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

435. Mischief by fire or explosive substance with intent to cause damage to amount of one hundred rupees or (in case of agricultural produce) ten rupees. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause damage to any property to the amount of one hundred rupees or upwards or (where the property is agricultural produce) ten rupees or upwards, shall be punished with imprisonment of either description for a term which 2-3[shall not be less than two years nor more than] seven years and shall also be liable to fine.

436. Mischief by fire or explosive substance with intent to destroy house, etc. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or a as a human dwelling or as a place for the custody of property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which 4[shall not be less than three years nor more than] ten years, and shall also be liable to fine.

#### COMMENTARY

Appeal against conviction with sentence of 10 years' R.I. plus fine of 5 lac rupees recorded by Special Court (Terrorist Activities). High Court finding that P.Ws. furnishing ocular account had admittedly not witnessed occurrence. Held: There being nothing to connect appellants with offence, conviction/sentence recorded against him was liable to be set aside with order for his acquittal.<sup>5</sup>

Setting house on fire causing damage to house-hold articles. Office of. Conviction for. Challenge to. Nature of occurrence was such if complainant party was sure that culprits/assailants were none else than accused, they would have not delayed report for eight hours. It can, therefore, be safely inferred that intervening time was utilized for deliberations and possibility of appellants having been involved on guess work/mere suspicions on account of previous enmity cannot be ruled out. Perusal of record shows that learned Judge based conviction of all accused/appellants on ocular account furnished by PWs. All three PWs are related inter se and in such circumstances, it is not safe to rely upon evidence of such interested and inimical witnesses in absence of any independent evidence which is lacking. Story of putting house and belongings on complainant to fire with bottle of kerosine oil, empty handed, without arm and knowing well presence of inmates of house cannot be ordinarily believed. Prosecution has also tried to seek corroboration of ocular account from evidence of recovery of burnt articles, which are alleged to have been secured. Admittedly, these incriminating recoveries were not kept in sealed parcel, as such, it lost its credibility as well as its authenticity. Held: Prosecution has not been able to prove its case against appellants beyond reasonable doubt. Appeal allowed and accused acquitted of charges.6-7

Transfer of case form Court of Magistrate Section 30 to Special Court for Speedy Trials. Wrong mention of provision of law in the transfer order. Effect. Such transfer order was issued by the Federal Government after appreciation of all necessary guidelines elemental to public interest. Mere mention of wrong S. 5(1) instead of S. 5(2) of act IX of 1992 by mistake could not render the transfer order illegal. Offence under S. 436, P.P.C. was a scheduled offence and further setting at fire the copies of the Holy Qur'an was an act highly sensational in character and shocking to public morality creating an atmosphere of anxiety among the Muslims and causing injury to their religious feelings. Speedy trial of such cases being in public interest order of transfer of the cases from the Court of Judicial Magistrate to Special Court for Speedy Trials, therefore, did not (sic) from any legal infirmity. Writ petitions were dismissed accordingly.8

437. Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden. Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tones or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

438. Punishment for the mischief described in section 437 committed by fire or explosive substance. Whoever commits, or attempts to commits, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

439. Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

440. Mischief committed after preparation made for causing death or hurt. Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

#### Of Criminal Trespass

441. Criminal trespass. Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

is said to commit "criminal trespass".

442. House-trespass. Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is, said to commit "house-trespass".

Explanation. The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

443. Lurking house-trespass. Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."

444. Lurking house-trespass by night. Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night."

445. House-breaking. A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say: –

First: If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly: If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly: If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which the passage was not intended by the occupier of the house to be opened.

Fourthly: If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly: If he effects his entrance or departure by using criminal force of committing an assault, or by threatening any person with assault.

Sixthly: If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation: Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

#### Illustrations

(a) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(c) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(d) A commits house-trespass by entering Z's house through the door, having opened the door which was fastened. This is house-breaking.

(e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f) A finds the key of Z's house door, which Z had lost, and commit its house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(g) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house, this is house-breaking.

(h) Z the door-keeper of Y is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

446. House-breaking by night. Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night."

447. Punishment of criminal trespass. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

## COMMENTARY

Persons already in occupation, cultivating and enjoying land, whether with or without title cannot be charged offence under Ss. 447, 379.8

448. Punishment for house-trespass. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

449. house-trespass in order to commit offence punishable with death. Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with imprisonment for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

450. House-trespass in order to commit offence punishable with imprisonment for life. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

451. house-trespass in order to commit offence punishable with imprisonment. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

452. house-trespass after preparation for hurt, assault or wrongful restraint. Whoever commits house-trespass, having made preparation for causing hurt to any person or for wrongfully restraining any person or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

## COMMENTARY

Appreciation of evidence. Delay in lodging the F.I.R. was plausibly explained. Existence of residential rooms with a bathroom surrounded by four walls having not been challenged by the defence, occurrence had taken place in a building used as a human dwelling. Showing "Churri" and frightening a nubile virgin girl of 13/14 years and dragging her from collar was enough to constitute criminal force and outraging her modesty. Convictions and sentences of accused were upheld in circumstances.<sup>10</sup>

Conviction without a charge. Conviction and sentence passed upon accused S. 452, P.P.C. by the Trial Court without having charged him for the same were irregular and without lawful authority and the same were consequently set aside.<sup>1</sup>

453. Punishment for lurking house-trespass or house-breaking. Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.



454. Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment. Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

455. Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint. Whoever commits lurking house-trespass, or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

456. Punishment for lurking house-trespass or house-breaking by night. Whoever commits lurking house-trespass by night or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

457. Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment. Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

#### COMMENTARY

Constitutional petition. F.I.R. which did not prima facie disclose any offence had been lodged regarding a civil matter eleven years after the occurrence just to harass and humiliate the accused which spoke volumes about the mala fides of the complainant. Investigation Officer was also unable to find out the exact date and time of the commission of the offence. No conviction could be recorded on the basis of the material so far collected by the police and the trial, if allowed, would be a mock trial and travesty of the justice. Proceedings arising out of the F.I.R. were consequently declared to be without lawful authority and of no legal effect and the Constitutional petition was accepted accordingly.<sup>4</sup>

458. Lurking house-trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint. Whoever commits lurking house-trespass by night or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

5[459. Hurt caused whilst committing lurking house-trespass or house-breaking. — Whoever, whilst committing lurking house-trespass or house-breaking, causes hurt to any person or attempts to commit qatl of, or hurt to, any person, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also

be liable to the same punishment for committing qatl or causing hurt or attempting to cause qatl or hurt as is specified in Chapter XVI of this Code.]

5[460. Persons jointly concerned in lurking house-trespass or house-breaking by night punishable for qatl or hurt caused by one of them. — If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to commit qatl of, or hurt to, any person, every person jointly concerned in committing such lurking house-trespass by night or house-trespass by night, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to the same punishment for committing qatl or causing hurt or attempting to cause qatl or hurt as is specified in Chapter XVI this Code.]

COMMENTARY

Appreciation of evidence. Motive mentioned in the F.I.R. was not proved, Characteristics and description of the accused had not been given in the F.I.R. Eye-witnesses had made contradictory statements with dishonest improvements and they being closely related to the deceased could not be relied upon without independent and strong corroboration which was lacking. Accused were acquitted on benefit of doubt in circumstances.<sup>6</sup>

461. Dishonestly breaking, open receptacle containing property. Whoever dishonestly or with intent to commit mischief breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

462. Punishment for same offence when committed by person entrusted with custody. Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

## CHAPTER XVIII

### OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS

463. Forgery. Whoever makes any false document or part of a document, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, with intent to commit fraud or that fraud may be committed, commits forgery.

464. Making a false document. A person is said to make a false document: —

First: Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

Secondly: Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly: Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration.

#### Illustrations

(a) A has a letter of credit upon B for rupees 10,000, written by Z. A, in order to defraud B adds a cipher to the 10,000 and makes the sum 1,00,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B and thereby of obtaining from B the purchase-money. A has committed forgery.

(c) A picks up a cheque on a banker, signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d) A leaves with B, his agent a cheque on a banker, signed by A, without inserting the sum payable and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill. A is guilty of forgery.

(f) Z's will contains these words: "I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses Government promissory (sic) makes it payable to Z or his order by writing on the bill the words "Pay to Z or his (sic) and signing the endorsement. B dishonestly crases the words "Pay to Z or his order" and thereby converts the special endorsement into a bland endorsement. B commits forgery.

(h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z and by representing to Z, that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances for unforeseen misfortune, intending by means of such letter to obtain aims from Z and other persons. Here, as A made false document in order to induce Z to part with property. A has committed forgery.

(k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z, A has committed forgery inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1: A man's signature of his own name may amount to forgery.

#### Illustrations

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person to the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper and sign it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it has been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable, here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against C, B, after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed (sic) was granted before the seizure. B, though he executes the lease in his own name (sic)

Explanation 2: The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person or in the name of a deceased person, intending it to be believed that the document was made by the person in his life time, may amount to forgery.

#### Illustration

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

465. Punishment for forgery. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

## COMMENTARY

Registration of case. S.H.O. was not within his statutory right to refuse the registration of the case when the commission of the offence was alleged by the complainant to lay such information in writing through application before the Senior Police Officers soon after coming to know about the commission of forgery by the accused in the matter of the receipt of Rs.5,00,000 from him. Neither Deputy Superintendent of Police (Legal) was possessed of any authority/jurisdiction to opine on the method/manner of registration of a criminal case by the S.H.O. nor even his opinion was supported by any precedent. Failure on the part of S.H.O. to register the case was, therefore, declared to be beyond his statutory duty and he was directed to proceed with the registration of the case and to conduct investigation of the same under Police Rules, 1934.<sup>7</sup>

466. Forgery of record of Court or of public register, etc. Whoever forges a document, purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power-of-attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

467. Forgery of valuable security, will, etc. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

468. Forgery for purpose of cheating. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

## COMMENTARY

Constitutional petition. Quashing of F.I.R. Remedy already being pursued before a Banking Court was the one more proper. Complainant in getting the F.I.R. registered against the accused had patently enforced a civil liability through criminal process which on the face of it was not sustainable in law. Impugned F.I.R. was consequently cancelled and the proceedings pursuant thereto were quashed. Constitutional petition was accepted accordingly.<sup>8</sup>

Conviction/sentence recorded by Trial Judge without framing charge in accordance with law and without conducting examination of accused in accordance with requirement of S. 342, Cr.P.C. would not be sustainable in law. High Court in such case accepting appeal against conviction/sentence and ordering acquittal of convict/appellant.<sup>9</sup>

Photostat copies of original documents cannot be made basis of conviction when prosecution did not produce original documents for inspection by the Court. Mere fact that defence did not object to Photostat copies would not make any difference because consent of parties cannot override express provisions of Qanun-e-Shahadat Order (1984) regarding proof of documents. Conviction recorded by Trial Judge by relying on Photostat copies cannot be sustained in law as Photostat copies without production of original were not admissible in evidence. High Court in such case accepting appeal against conviction/sentence recorded by Trial Judge and ordering acquittal of convict/appellant.<sup>1</sup>

469. Forgery for purpose of harming reputation. Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

470. Forged document. A false document made wholly or in part by forgery is designated "a forged document".

471. Using as genuine a forged document. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

472. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punishable with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

473. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than section 467, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

474. Having possession of document described in section 466 or 467 knowing it to be forged and intending to use it as genuine. Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466, of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with imprisonment for life, or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.

475. Counterfeit device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material. Whoever counterfeits upon, or in the substance of, any

material, any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity of any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

476. Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material. Whoever counterfeit upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

477. Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security. Whoever, fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

477-A. Falsification of accounts. Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, willfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or had been received by him for or on behalf of his employer or willfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, paper, writing valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation: It shall be sufficient in any charge under this section to allege (sic) intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.

#### Of Trade, Property and Other Marks

1[478. Trade mark. A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade mark, and for the purpose of this Code the expression "trade mark" includes any trade mark which is registered in the register of trade marks kept under the Trade Marks Act, 1940 (V of 1940).]

479. Property mark. A mark used for denoting that movable property belongs to a particular person is called a property mark.

480. Using a false trade mark. Whoever marks any goods or any case, package or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade mark.

481. Using a false property mark. Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

482. Punishment for using a false trade-mark or property mark. Whoever uses any false trade mark or any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

483. Counterfeiting a trade mark or property mark used by another. Whoever counterfeits any trade mark or property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

484. Counterfeiting a mark used by a public servant. Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that the property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

485. Making or possession of any instrument for counterfeiting a trade mark or property mark. Whoever makes or has in his possession any die, plate or others instrument for the purpose of counterfeiting a trade mark or property mark or has in his possession a trade mark or property mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

486. Selling goods marked with a counterfeit trade mark or property mark. Whoever sells, or exposes, or has in possession for sale or any purpose of trade or manufacture, any goods or thing with a counterfeit trade mark or property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves: —



(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently.

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

487. Making a false mark upon any receptacle containing goods. Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he prove that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

488. Punishment for making use of any such false mark. Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

489. Tampering with property mark with intent to cause injury. Whoever removes destroys, defaces or adds to any property mark,

intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.

#### Of Currency-Notes and Bank-Notes

489-A. Counterfeiting currency-notes or bank-notes. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation: For the purposes of this section and of sections 489-B, 489-C and 489-D, the expression "bank-note" means a promissory-note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for money.

489-B. Using as genuine, forged or counterfeit currency-notes or bank-notes. Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any

forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

489-C. Possession of forged or counterfeit currency-notes or bank notes. Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

489-D. Making or possessing instruments or materials (sic) forging or counterfeiting currency-notes or bank-notes. Whoever makes, or performs any part of the process of making or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

489-E. Making or using documents resembling currency-notes or bank-notes. (1) Whoever makes, or causes to be made, or uses for any purpose whatsoever, or delivers to any person, any document purporting to be, or in any way resembling or so-nearly resembling, as to be calculated to deceive, any currency-note or bank-note shall be punished with 2[imprisonment of either description for a term which may extend to one year, or with fine, or with both.]

(2) If any person, whose name appears on a document the making of which is an offence under sub-section (1), refuses, without lawful excuse, to disclose to a police officer on being so required the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to two hundred rupees.

(3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub-section (1) or on any other document used or distributed in connection with the document, it may, until the contrary is proved, be presumed that person caused the document to be made.

\*[489-F. Counterfeiting or using documents resembling National Prize Bonds or unauthorized sale thereof. — Whosoever counterfeits, or causes to counterfeit, or performs any act to use for any purpose whatsoever, or delivers to any person, any document purporting to be, or in any manner resembling to the National Prize Bonds, or indulges in the business of sale or purchase of National Prize Bonds, or promotes such sale or purchase of national Prize Bonds, in contravention of the rules made for that purpose, shall be punishable with the imprisonment for a term which may extend to five years, or with fine not exceeding one hundred thousand rupees, or with both.”.

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## CHAPTER XIX

### OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE

490. Breach of contract of service during voyage or journey. [Rep. by the Workman's Breach of Contract (Repealing) Act, 1925 (III of 1925), S. 2 and Schedule].

491. Breach of contract to attend on any supply wants of helpless person. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind of providing for his own safety or of supply of his own wants, voluntarily omits, or of a disease or bodily weakness is helpless or incapable so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

492. Breach of contract to serve at distant place to which servant is conveyed at master's expense. [Rep. by the Workman's Breach of Contract (Repealing) Act, 1925 (III of 1925), Sec. 2 and Schedule].

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## CHAPTER XX

### OF OFFENCES RELATING TO MARRIAGE

493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage. [Rep. by the Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979)].

494. Marrying again during lifetime of husband or wife. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception : This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted. Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

496. Marriage ceremony fraudulently gone through without lawful marriage. Whoever, dishonestly or with a fraudulently intention, goes through the ceremony of being married knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

497. [Repealed by Ordinance VII of 1979]

498. [Repealed by Ordinance VII of 1979]

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## CHAPTER XXI

### OF DEFAMATION

499. Defamation. Whoever by words either spoken or intended to be read, or by sign or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1: It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2: It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3: An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4: No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

#### Illustrations

(a) A says: "Z is an honest man; he never stole B's watch": intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it falls within one of the exceptions.

(b) A is asked who stole B's watch. Appoints to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

First Exception. Imputation of truth which public good requires to be made or published. It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception. Public conduct of public servants. It is not defamation to express in good faith any opinion on whatever respecting the conduct of a public servant in the discharge of his

public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception. Conduct of any person touching any public question. It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

#### Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing requisition for a meeting on a public question, in presiding or attending as such meeting, informing or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception. Publication of reports of proceedings of Courts. It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation: A Justice of the peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception. Merits of case declined in Court or conduct of witnesses and others concerned. It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

#### Illustrations

(a) A says, "I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says that in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness and no further.

(b) But if A says, "I do not believe what Z asserted at that trial because I know him to be a man without veracity." A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception. Merits of public performance. It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation: A performance may be submitted to the judgment of the (sic) expressly or by acts on the part of the author which imply such submission to the judgment of the public.

## Illustrations

- (a) A person who publishes a book, submits that book to the judgment of the public.
- (b) A person who makes a speech in public, submits that speech to the judgment of the public.
- (c) An actor or singer who appears on a public stage, submit his acting or singing to the judgment of the public.
- (d) A says of a book published by Z. "Z's book is foolish: Z must be a weak man, Z's book is indecent; Z must be a man of impure mind." A is within this exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z, respects Z's character only so far as it appears in Z's book, and no further.
- (e) But if A says, "I am not surprised that Z's book is foolish and indecent, for he is weak man and a libertine" A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception. Censure passed in good faith by persons having lawful authority over another. It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

## Illustration

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his order; a person censuring in good faith a child in the presence of other children; a school-master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith, the cashier of his bank for the conduct of such cashier are within the exception.

Eight Exception. Accusation preferred in good faith to authorized person. It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

## Illustration

If A in good faith accused Z before A Magistrate; if A in good faith complains of the conduct Z a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father. A is within this exception.

Ninth Exception. Imputation made in good faith by person for protection of his or other's interest. It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

## Illustrations

(a) A, a shopkeeper, says to B, who manages his business, "Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty". A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interest.

(b) A, a Magistrate, in making report of his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good. A is within the exception.

Tenth Exception. Caution intended for good of person to whom conveyed or for public good. It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

500. Punishment for defamation. Whoever defames another shall be punished with simple imprisonment for term which may extend to two years, or with fine or with both.

#### COMMENTARY

Complaint for offences u/ss. 499, 500 filed in 1985 and not decided till 1997. Record showing that since registration of complaint, both the parties on account of their contributory acts and commissions were responsible for such an extreme delay of more than 12 years in disposal of complaint. Held: Trial Court had erred in holding that complainant simply wanted to drag the accused into proceedings of the case.<sup>5</sup>

501. Printing or engraving matter known to be defamatory. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine or with both.

502. Sale of printed or engraved substance containing defamatory matter. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

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#### CHAPTER XXII

#### OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

503. Criminal intimidation. Whoever threaten another with an injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation: A threat to injure the reputation of any deceased person in whom the person threatened is interested is within this section.

## Illustration

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

504. Intentional insult with intent to provoke breach of the peace. Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

6[505. Statement conducing to public mischief. (1) Whoever makes, publishes or circulates any statement, rumour or report: —

(a) with intent cause or incite, or which is likely to cause or incite, any officer, soldier, sailor, or airman in the Army, Navy or Air Force of Pakistan to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the public tranquility; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment for a term which may extend to seven years and with fine.

(2) Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment for a term which may extend to seven years and with fine.

Explanation: It does not amount to an offence within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it in good faith and without any such intent as aforesaid].

506. Punishment for criminal intimidation. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.; and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with



imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

507. Criminal intimidation by an anonymous, communication. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

508. Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure. Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

#### Illustrations

(a) A sits dhurna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

509. Word, gesture or act intended to insult the modesty of a woman. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

510. Misconduct in public by a drunken person. Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

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## CHAPTER XXIII

### OF ATTEMPTS TO COMMIT OFFENCES

511. Punishment for attempting to commit offences punishable with 7[imprisonment for life] or for shorter terms. Whoever attempts to commit an offence punishable by this Code with

7[imprisonment for life] or imprisonment, or to cause such an offence to be committed and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with 7[imprisonment of any description provided for the offence for a term which may extend to one-half of the longest term of imprisonment provided for the offence] or with such fine 8[daman] as is provided for the offence, or with both.

#### Illustrations

(a) A makes an attempts to steal some jewels by breaking open the box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore, is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket, A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

#### COMMENTARY

Attempt to commit zina can in no manner be termed as "molestation" as mentioned in S. 354. Meaning of words "attempt" u/s. 511 and "molestation" u/s. 354 explained.<sup>9</sup>