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Peshawar High Court
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SUPREME COURT OF PAKISTAN

P L D 2021 Supreme Court 434

Mst. Jaiwanti Bai VS Messrs Amir Corporation and Others

Agreement to sell and Limitation period, when computed? Discussed

MUSHIR ALAM, J

13. It is a settled position in law that generally in a sale of immoveable property, time is not the essence of the contract, unless it is made so….

26. Attending to question of limitation, cases of specific performance are governed under Article 113 of the Limitation Act, which is reproduced below for convenience sake:

	Description of Suit	Period of Limitation	Time from which period begins to run
113	For Specific performance of a contract	Three (3) years	The date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused

28. To seek specific performance of agreement to sell, Article 113 of the Limitation Act provides two starting points to trigger the period of limitation of three years; one from 'the date fixed for the performance, and second where 'no such date is fixed, when the plaintiff has notice that performance is refused.

Appeal allowed.

P L D 2021 Supreme Court 488

Mst. Safia Bano and another VS Home Department Government of Punjab through Secretary and others

Plea raised regarding state of mind at the time of commission of offence, onus would be on defense. Significance of Mental health, discussed

MANZOOR AHMAD MALIK, J. The mental health of a person is as important and significant as his physical health. Unfortunately, it is often not given the importance and seriousness it deserves. Because of certain misconceptions, the implications of mental illness are overlooked and the vulnerability or disability that it causes is not given due attention.

43. Thus, within the contemplation of section 84, P.P.C., whenever the plea is raised regarding the state of mind of accused at the time of commission of offence, the onus-like all other exceptions in Chapter IV of P.P.C. will be on the defense (accused) to prove such a plea as contemplated in Article 121 of Qanun- e-Shahadat Order, 1984 (QSO). As per Article 121 of QSO, the onus is on the accused to prove that when the alleged act was committed, he/she was suffering from a mental illness which made him/her incapable of knowing the nature of the act or that what he/she was doing was either wrong or contrary to law. While

considering the case law referred to herein above, we hold that in the case of a special plea under section 84, P.P.C., the Courts should keep the following principles in view: -

(i) It is the basic duty of the prosecution to prove its case against the accused beyond reasonable doubt and the prosecution will not be absolved of this duty if the accused is unsuccessful in proving a plea raised on his/her behalf.

(ii) Where the accused raises any specific plea, permissible under the law, including a plea under section 84, P.P.C., the onus to prove such plea is on the accused. However, while proving such plea, the accused may get benefit from any material, oral documentary, produced/relied upon by the prosecution.

Order accordingly.

P L D 2021 Supreme Court 550

Atif Zareef etc. VS The State

Two-finger test" (TFT) or "virginity test"---Constitutionality and legality in Rape cases

SYED MANSOOR ALI SHAH, J

Modern forensic science - sexual history and virginity testing

8. **Lynn Enright in her book "Vagina - a Re-education" writes** that we are taught from an early age that the hymen is associated with female purity. It is imagined as a sheath protecting the opening of the vagina. But this is false. The hymen has no biological function; it has been made into a symbol of virginity around the world. These inaccuracies are largely rooted in misogyny. Medical jurisprudence textbooks had previously prescribed certain tests of medical evaluation to determine prior virginity of an alleged rape victim, viz, assessment of the elasticity of her vaginal orifice by insertion of two fingers in her vagina and examination of the state of her genitals particularly the hymen. These textbooks had a significant impact on the adjudication of rape cases in the British India, as well as, in Pakistan and India post-independence….

9. ……. The medical officers instead of burdening themselves with reporting about the sexual history of the victim must ensure, according to **Modi's Textbook of Medical Jurisprudence and Toxicology,** in a case of sexual offence of rape to examine the external genital area for evidence of injury, seminal stains and stray pubic hair.

Constitutionality of "sexual history"

11. Dragging sexual history of the rape survivor into the case by making observations about her body including observations like "the vagina admits two fingers easily" or "old ruptured hymen" is an affront to the reputation and honour of the rape survivor and violates Article 4(2)(a) of the Constitution, which mandates that no action detrimental to the body and reputation of person shall be taken except in accordance with law. Similarly, Article 14 of our Constitution mandates that dignity shall be inviolable, therefore, reporting sexual history of a rape survivor amounts to discrediting her independence, identity, autonomy and free choice thereby degrading her human worth and offending her right to dignity

guaranteed under Article 14 of the Constitution which Right to dignity under Article 14 of the Constitution is an absolute right and not subject to law. Dignity means human worth: simply put, every person matters. No life is dispensable, disposable or demeanable. Every person has the right to live, and the right to live means right to live with dignity. A person should live as "person" and no less.[12] Human dignity hovers over our laws like a guardian angel; it underlies every norm of a just legal system and provides an ultimate justification for every legal rule.[13] Therefore, right to dignity is the crown of fundamental rights under our Constitution and stands at the top, drawing its strength from all the fundamental rights under our Constitution and yet standing alone and tall, making human worth and humanness of a person a far more fundamental a right than the others, a right that is absolutely non-negotiable.

12. A woman, whatever her sexual character or reputation may be, is entitled to equal protection of law. No one has the license to invade her person or violate her privacy on the ground of her alleged immoral character. Even if the victim of rape is accustomed to sexual intercourse, it is not determinative in a rape case; the real fact-in-issue is whether or not the accused committed rape on her. If the victim had lost her virginity earlier, it does not give to anyone the right to rape her.[14] In a criminal trial relating to rape, it is the accused who is on trial and not the victim. The courts should also discontinue the use of painfully intrusive and inappropriate expressions, like "habituated to sex", "woman of easy virtue", "woman of loose moral character", and "non-virgin", for the alleged rape victims even if they find that the charge of rape is not proved against the accused. Such expressions are unconstitutional and illegal.

Petition Allowed.

P L D 2021 Supreme Court 571

Mian Irfan Bashir VS Deputy Commissioner (D.C.), Lahore and others

Whether a High Court enjoy suo motu jurisdiction under Art. 199 of the Constitution? Judicial overreach, judicial adventurism or judicial imperialism. Discussed

SYED MANSOOR ALI SHAH, J

4. ……There is no law or executive policy supporting such a ban on sale and purchase of petrol by the petrol pump owners to the motorcyclists not wearing helmets. The impugned direction is above the law and has no legal legitimacy or sanctity. Such exercise of judicial power by a judge passes for judicial overreach i.e., exercise of judicial power without any backing of law and clearly interfering in and encroaching on the legislative and executive domain. At this junction it might be opportune to shed some light on the distinction between judicial review, judicial activism and judicial overreach. Judicial review is the power of the courts to examine the actions of the legislative, executive, and administrative arms of the government and to determine whether such actions are consistent with the Constitution. Actions judged inconsistent are declared unconstitutional and, therefore, null and void.[2]Judicial review is the genus and judicial activism or judicial restraint are its subspecies. While exercising judicial

review, there comes a point when the decision rests on judicial subjectivity; which is not the personal view of a judge but his judicial approach. One judge may accord greater significance to the need for change, while the other may accord greater significance to the need for certainty and status quo. Both types of judges act within the zone of law; neither invalidates the decision of another branch of the Government unless it deviates from law and is unconstitutional. Activist judges (or judicial activism) are less influenced by considerations of security, preserving the status quo, and the institutional constraints. On the other hand, self-restrained judges (or judicial restraint) give significant weight to security, preserving the status quo and the institutional constraints. Both judicial activism and judicial self-restraint operate within the bounds of judicial legitimacy.

6. Judicial overreach is when the judiciary starts interfering with the proper functioning of the legislative or executive organs of the government. This is totally uncharacteristic of the role of the judiciary envisaged under the Constitution and is most undesirable in a constitutional democracy. Judicial overreach is transgressive as it transforms the judicial role of adjudication and interpretation of law into that of judicial legislation or judicial policy making, thus encroaching upon the other branches of the Government and disregarding the fine line of separation of powers, upon which is pillared the very construct of constitutional democracy. Such judicial leap in the dark is also known as "judicial adventurism" or "judicial imperialism." A judge is to remain within the confines of the dispute brought before him and decide the matter by remaining within the confines of the law and the Constitution. The role of a constitutional judge is different from that of a King, who is free to exert power and pass orders of his choice over his subjects. Having taken an oath to preserve, protect and defend the Constitution, a constitutional judge cannot be forgetful of the fact that he himself, is first and foremost subject to the Constitution and the law. When judges uncontrollably tread the path of judicial overreach, they lower the public image of the judiciary and weaken the public trust reposed in the judicial institution. In doing so they violate their oath and turn a blind eye to their constitutional role. Constitutional democracy leans heavily on the rule of law, supremacy of the Constitution, independence of the judiciary and separation of powers. Judges by passing orders, which are not anchored in law and do not draw their legitimacy from the Constitution, unnerve the other branches of the Government and shake the very foundations of our democracy.

Petition allowed.

P L D 2021 Supreme Court 373

Khawaja Bashir Ahmed and Sons Pvt. Ltd VS Messrs Martrade Shipping and Transport and others

For O. XXIII, R. (1)(2)(b), C.P.C to be at all applicable it was necessary that the facts disclosed in the application seeking permission must, in law, amount to a "ground".

MUNIB AKHTAR, J

8. At first sight, the passage extracted above (and especially the portion emphasized) appears to favor the appellant. However, when a closer look is taken a different conclusion emerges.

Now, clause (a) of Rule 2 allows permission to be granted to file a fresh suit if the court is satisfied that the "suit must fail by reason of some formal defect". Clause (b) allows for such permission if "there are other sufficient grounds". We are of course concerned with the latter provision. In our view, for the provision to be at all applicable it is necessary that the facts disclosed in the application seeking permission must, in law, amount to a "ground". It is only then that the provision becomes applicable, requiring the court to satisfy itself as to the sufficiency (or lack) of the stated ground. The observations of this Court in the cited decision (and in particular in the passage extracted above) are necessarily premised on this. However, if what is stated in the application is not a "ground" at all then obviously no question would arise of the court having to consider whether there is any sufficiency or lack thereof. When the application in the present case is considered all it stated was that the appellant "for the time being doesn't want to proceed further against" the second respondent, and that the appellant "reserves its rights to sue the said defendant whenever the necessity so arises". This is, in law, no ground at all. **A plaintiff cannot be allowed to file his suit and then, at his sweet will and pleasure, exit the litigation only to enter the arena again as and when he pleases.** If this is permissible under Rule 2(b) then that effectively puts paid to the consequences envisaged by Rule 3. And, it must be remembered, there would be nothing, in principle, preventing a plaintiff from doing this ad nauseam. This cannot be the true meaning and scope of Rule 2(b). It is only when the facts disclose what can, in law, be regarded as a "ground" that it becomes necessary for the court to consider the sufficiency (or lack) thereof. Here, there was no such thing. The application itself, on the face of it, purported to have been moved under Rule 1. Nothing was said before the learned trial Court as would have required it to conclude otherwise, nor was any attempt made then or later to withdraw the same. The order made by the Court was unexceptionable and in accordance with law. It did not warrant any interference, and the learned High Court was right to dismiss the revision petition. Likewise, there was no merit to this appeal and it accordingly stood dismissed as noted above.

Appeal dismissed.

PESHAWAR HIGH COURT

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/ba973-2021-14-6-2021.pdf

Bail Petition No. 973-P/2021

Atlas Khan Vs State

520 grams of Amphetamine / Ice recovered from the direct and immediate possession of the accused petitioner is a huge quantity compared with "*Charas*" and attracts prohibitory limb of sec 497 CrPC.

QAISER RASHID KHAN, CJ

4. Amphetamine / Ice is the latest and most lethal among the contrabands, which as against the other narcotics like 'charas' is not possessed in maunds and kilograms but in small quantity given the fact that it is by far the most expensive contraband' However' its small quantity has proved to have devastating effects on its consumers, who mostly happen to be from the younger generation including the school and college

going students' By that count, 520 grams of Amphetamine / Ice recovered from the direct and immediate possession of the accused petitioner is a huge quantity in respect of which the FSL report is also in the affirmative' Thus' the accused petitioner is prima facie connected with the commission of the offence attracting the prohibitory limb of section 497 Cr.P.C. Hence, I hold him disentitled to the concession of bail

Writ Petition No.5567-P/2019

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/Akhtar-Ullah-Khattak-vs-Collector-LAC-_de-notification-of-acquired-land_.pdf

Akhtar Ullah Khan Khattak VS Collector Land Acquisition, Nowshera and others

Can a commissioner withdraw from an acquired land after taking possession by virtue of section 48 of the Land Acquisition Act?

ROOH-UL-AMIN KHAN, J

9. ……. The provisions of section 48 of the Act are intended to vest powers in the Land Acquisition Collector to withdraw from acquisition of the land of which possession has not yet been taken. After taking possession, the Land Acquisition Collector, becomes functus officio in the matter of acquisition and any action taken thereafter would amount to departure and deviation from the scheme of the Act. Section 48 provides a method for 10 brining the acquisition proceedings to an end prior to dispossession of the land owners from their properties. Whenever the Land Acquisition Collector, intends to exercise powers of withdrawal from any acquisition, he shall determine the amount of compensation due for the damage suffered by the land owners in consequence of the notice or of any proceedings there under and shall pay such amount to the person(s) interested together with all costs reasonably incurred by in the prosecution of the proceedings under the Act, relating to the acquired land. Bare reading of section 48 of the Act will make it abundantly clear that the Land Acquisition Collector has no authority and power to withdraw from acquisition after taking possession of the land. In other words, the powers granted to the Land Acquisition Collector under section 48 of the Act, shall come to an end on taking the possession of the land. In the instant case, there is no cavil to the fact that possession of the land remained with the respondents, firstly, on lease since 1955 and, secondly, it was taken in consequence of the award announced in the year 1999. On the issue of compensation, the parties have litigated up to the Hon'ble Supreme Court where it was finally decided vide judgment dated 15.02.2018, and Rs. 12,000/- per Marla was determined and fixed as compensation of the acquired land, payable to the petitioners-landowners along with 6% interest by the respondents. The factum of possession of the land being with the respondents is never disputed. Besides, during the course of arguments, it was never contended before us that possession in 11 pursuance of the acquisition proceedings was not handed over to the respondents-acquiring department, rather during proceedings in the Reference before the Referee Court, factum of taking possession of the land is admitted by the respondents-acquiring department. This fact alone is sufficient to hold that section 48 of the Act of 1894, under the circumstances, could not be attracted. Besides, withdrawal of Government from acquisition under section 48 entails automatic rescission of all previous notifications which, of course, is not the case of the respondents that all the previous notifications in this regard have

become ineffective. In this regard reliance can be placed on the judgment of the august apex court in case titled, "Messrs Dewan Salman Fiber Ltd and others vs Government of NWFP through Secretary, Revenue Department, Peshawar and others" (PLD 2004 Supreme Court 441).

Petition allowed.

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/4576-2020-BBA-Captan-Safdar.pdf

W.P.No. 4576-P/2020.

Muhammad Safdar Vs Chairman NAB etc.

Lal Jan Khattak, J

Circumstance under which bail before arrest can be granted to an accused charged by NAB for accumulating assets beyond his known legal resource of income

8. It is a well settled legal proposition that while exercising a writ jurisdiction pertaining to grant or otherwise of bail before arrest a High Court cannot hold whether a particular asset has come to the 7 holder of a public office or to any other person through his known legal sources of income or otherwise and such is obviously done for the reason that let it may not prejudice the case of either of the two parties either before the Investigating Team or the Accountability Court, as the case may be. What the High Court, while exercising its constitutional jurisdiction in a case like the instant one, has to do is to see whether or not there is any mala fide on the part of the NAB Authorities to arrest the accused and whether or not a prima facie case for grant of the extra ordinary concession of admitting him to bail before arrest has been made out? If the constitutional court, in the light of record, reaches to a conclusion that mala fide reflects from the intended NAB's move to arrest an accused and the latter also succeeds in setting up a prima facie case in his favor then in such like situation, it is the primary duty and legal obligation of the court to grant relief to the citizen so that he could be protected from the unjust and arbitrary arrest and if despite the element of mala fide on the part of NAB to nab the accused the latter is not admitted to bail before arrest and allowed to be grilled by 8 the former's Investigators for a maximum period of 90 days by putting him behind the bars then the centuries old jurisprudence developed by the courts of law qua the presumption of innocence of an accused unless proven guilty would die down and would be meaningless.

Petition Allowed.

2021 CLC 1230 (Peshawar)

Civil Revision No. 372 P/2014

Muhammad Riaz VS Hassan Dad etc.

S.M ATTIQUE SHAH, J

Whether owners in the column of cultivation in undivided khata could not be included in application for partition for the sole reason of their being in column of cultivation.

8. The ibid question, had long been resolved by the august apex Court in the case of Muhammad Muzzaffar Khan Versus Muhammad Yusuf Khan reported in 1959 PLD SC 9. Wherein, it had explicitly been held that "The vendee of a co-sharer who

owns an undivided khata in common with another, is clothed with the same rights as the vendor has in the property no more and no less. If the vendor was in exclusive possession of a certain portion of the joint land and transfers its possession to the vendee, so long as there is no partition between the co-sharers, the vendee must be regarded as stepping into the shoes of his transferor qua his ownership rights in the joint property, to the extent of the area purchased by him, provided that the area in question does not exceed the share which the transferor owns in the whole property. It was further held that alienation of specific plots transferred to the vendee would only entitle the later retain possession of them till such time as an actual partition by metes and bounds takes place between the co-sharers. The ibid view was further re-affirmed in the cases of Mustafa Khan V. Muhammad Khan reported in 1970 PLD SC (AJ&K) 75. Shah Hussain V. Abdul Qayum and Others reported in 1984 SCMR 427 and in the case of Amir Shah Vs Ziarat Gul reported in 1998 SCMR 593.

9. The above leads this Court to irresistible conclusion that at the time of partition proceedings every joint owner is a necessary party, irrespective of being placed in the column of ownership or cultivation and; his rights are to be protected and safeguarded accordingly. Admittedly, names of the petitioners are entered in the column of cultivation; albeit, mere entry in the said column would not debar them from impleadment in the application for partition. Therefore, contention of the learned counsel for respondents qua non-joining of petitioners in the partition proceedings is misconceived, as petitioners entered into the shoes of their vendors in the joint khata to the extent of their purchased shares therein and; thus, they were necessary party in the ibid proceedings.

13. In view of above, instant revision petition is partially allowed, the impugned findings of both the Courts below only to the extent of partition proceedings are set-aside and; the matter in question is remanded to the Revenue Officer for fresh partition proceedings, strictly in accordance

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/W.P-No.4336-P-2020.pdf

WP No. 4336-P/2020

Syed Ashfaq Anwar VS Secretary, Housing Peshawar and other

SYED ARSHAD ALI, J

Legitimate expectation, vested right and promissory estopple, discussed.

11. Indeed, it is the case of the respondents that due to an inadvertent mistake in the advertisement the application for allotment of apartments/flats was also accepted from the serving employees of Federal Government belonging to the province of Khyber Pakhtunkhwa which is contrary to the policy of the respondent. However, in this regard the respondent has not conducted any inquiry as to whether this was an inadvertent mistake or an intentional insertion holding the serving employees of the Federal Government eligible for allotment of apartments. What has irked this Court is the conduct of the respondents that right from the advertisement till the time of issuing the impugned letter they have neither issued any corrigendum in the newspaper nor had informed the petitioners

regarding the existence of the policy contrary to the advertisement.

12. The documents placed on file by the respondents clearly reflect that the affairs of the PHA are being governed quirkily and in a fanciful manner. There are no clear or open rules, plans, policies, and/or a fair procedure framed by the competent authority regulating the affairs of the PHA. Such a structure, giving unbridled discretion to the officials working at the helm of any department/authority, has never been approved by the superior Courts. The Apex Court in the case of "Peer Imran Sajid (2015 SCMR 1257)" has held that object of good governance could not be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind. Such objective could be achieved only by following the rules of justice, fairness and openness in consonance with the command of the constitution enshrined in its different articles.

13…. To hold public servants responsible for their words, the Courts have always resorted to the well enshrined principles of legitimate expectation and promissory estopple. Fazal Karim in his famous book 'Judicial Review of Public Actions' while referring to the cases of "Aziz-ud-din (PLD 1970 SC 439) and Al-Samraiz (1986 SCMR 1917)" has 17 stated that vested rights and estopple are one and the same concept. However, if one claims a vested right while relying upon the representation of the government, he has to establish that the person making the representation had the legal authority to make such a representation; the said representation was not against any rules and the person claiming vested right has acted on such a representation, then in such a situation the government functionary is left with no authority to rescind or modify the said representation, if pursuant to the same, the claimant has taken a decisive step.

Petition Allowed.

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/Review-Petition-514-B-2017-in-WP-826-B-2017-judgment-.dt-21.4.2021.pdf

Review No. 514-B of 20ll in WP N of 2017

Maqbool Islam and seven (07) others VS Assistant Commissioner Banda Daud Shah, Karak & two (2) others

MUHAMMAD NAEEM ANWAR. J

Scope of Review discussed.

16. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order which cannot be disturbed. It is beyond any doubt or dispute that the review court does not sit as a court of appeal over its own order. A re-hearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. In nutshell the power of review can be exercised for correction of a mistake and not to substitute a view.

17. There is no cavil with the proposition that if the Court has taken a conscious and deliberate decision on a point of law or fact and disposed of the matter pending before it, review of such order cannot be obtained on the grounds that the Court took an erroneous view or that another view on reconsideration is possible, more-so review also cannot be allowed on the ground of discovery of some

new material, if such material was available at the time of hearing but not produced. Likewise, the Hon'ble Supreme Court of Pakistan in case titled "Sajid Mehmood versus Muhammad Shafi" reported in (2008 SCMR 554) has also held that: -

> "The exercise of review jurisdiction does not mean a rehearing of the matter and as finally attaches to the order, a decision, even though it is erroneous per se, would not be a ground to justify its review."

Petition dismissed.

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/WP-730-OF-2020..16042021082152.pdf

Writ Petition No.730-A of 2020

Raja Hafeez Anwar VS The Province of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and another

SHAKEEL AHMAD. J

Art 2, 20, 31 of the constitution. Discussed

12. Now turning to the legal aspect of the case, we found that the Objective Resolution which is now substantive part of the Constitution of Islamic Republic of Pakistan, 1973; Article 2-A besides other principles provides that the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirement of lslamas set out in the Holy Quran and Sunnah. After addition of Article 2-A in the Constitution, the Holy Quran and Sunnah have become the Supreme Law of Pakistan and not only the Courts are obliged to enforce the existing laws with such adaptations as are necessary in the light of the Holy Quran and Sunnah to uphold the Holy provisions thereof, but, every organ of the State is also duty bound to act and implement the Islamic principles as enshrined in the Holy Quran and Sunnah.

15.Article 227 of the Constitution envisages that All existing laws shall be brought in conformity with the injunctions of lslam as laid down in the Holy Quran and Sunnah, in this Part referred to as the injunctions of lslam, and no law shall be enacted which is repugnant to such injunctions.

17. Judging from all angles, we hold that assertion of the learned counsel for the petitioner is wholly Islamic and in accordance with the explicit mandates of the Holy Quran and Sunnah, thus, are worth consideration. Deletion of the above highlighted Chapter and Sentence from the ibid books have definitely injured the feelings of the Muslim Community and the students would be misled and deceived as regards the faith.

Petition Allowed.

FOREIGN JUDGMENTS

https://www.latestlaws.com/latest-caselaw/2021/june/2021-latest-caselaw-262-sc/

Would it be harsh to send a person to the Jail after 26 years of the occurrence?

Supreme Court of India

Surendran Vs. Sub-Inspector of Police

[Criminal Appeal No. 536 of 2021]

ASHOK BHUSHAN, J

3. The appellant, a bus driver, while driving bus No. KL7D 4770 caused an accident on 16.02.1995 in which car driver of KL 10B

5634 was injured. The appellant was charged with offence under Sections 279, 337 and 338 IPC . The learned Judicial First Class Magistrate vide his judgment dated 28.04.1999 convicted the accused under Section 279 IPC and 338 IPC and sentence him to undergo six months imprisonment and fine of Rs.500/- was imposed, in default to undergo simple imprisonment for one month under Section 337 IPC .

9. The judgment of this Court in Prakash Chandra Agnihotri (Supra) as relied by learned counsel for the appellant does support his submissions. In the above case, the accused was convicted and sentenced for six months under Section 304A. This Court converted the sentence of imprisonment into fine of Rs.500/-. The Court was of the view that it would be harsh to send the appellant to the Jail after 18 years of the occurrence. Following was observed in paragraph 1 of the judgment: -

"1. The Courts below have maintained the conviction of the appellant under Section 304-A Indian Penal Code. We have gone through the judgments of courts below and we find no infirmity therein. We uphold the conviction. The occurrence took place on February 18, 1972. The appellant has throughout been on bail. He has been sentenced to six months rigorous imprisonment and a fine of Rs.250. We are of the view that it would be rather harsh to send the appellant to jail after 18 years of the occurrence.

The ends of justice would be met if the appellant is asked to pay a fine of Rs.2000/-. The sentence is thus converted to a fine of Rs.2000/-. On realization the amount shall be paid to the family of the deceased girl. The amount be deposited with the Trial Court within two months from today and the trial court shall disburse the same to the parents of the girl and in absence of the parents to the next of kin of the girl. In default of the payment of fine the appellant shall undergo imprisonment for six months."

10. The incident took place on 16.02.1995 i.e. more than 26 years ago. It appears that appellant was throughout on the bail. The Trial Court after marshalling the evidence has recorded the conviction under Section 279, 338 and awarded sentence of imprisonment of six months and further sentenced to pay a fine of Rs.500/- under Section 337.

11. We do not find any error in conviction recorded by the Trial Court. The conviction of appellant is affirmed, however, looking to the facts and circumstances of the present case specially the fact that 26 years have elapsed from the incident, we are inclined to substitute the sentence of six months imprisonment under Section 279 and 338 into fine. Six months sentence under Section 279 and 338 IPC are substituted by fine of Rs.1000/- each whereas sentence of fine under Section 337 IPC is maintained.

12. The accused may deposit the fine of Rs.1000+1000 i.e. Rs.2000/- within a period of one month in the Trial Court. The judgments of the Courts below are modified to the above extent. The appeal is partly allowed accordingly.

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