P L D 2015 Supreme Court 50

Present: Mian Saqib Nisar, Asif Saeed Khan Khosa, Amir Hani Muslim, Ejaz Afzal Khan and Ijaz Ahmed Chaudhry, JJ

KHALID IQBAL and 2 others---Petitioners

Versus

MIRZA KHAN and others---Respondents

Crl. R.P.No.76/2008 in Crl.R.P. No.12/2001 and C.A.No.1262/2014 and Crl.M.A. No.371-L/2014 in Crl.R.P. No.Nil/2014 in Crl.P. No.50-L/2012, decided on 26th November, 2014.

(Against the order dated 6-3-2008 of this Court passed in CrI.R.P.No.12 of 2001 and against the order dated 7-5-2014 of the Lahore High Court, Bahawalpur Bench, passed in W.P.No.3280 of 2014 against the order dated 2-12-2002 of this Court passed in Crl.P.No.50-L of 2002).

(a) Criminal Procedure Code (V of 1898)---

---S. 403(1)---Constitution of Pakistan, Art. 13(a)---Autrefois acquit and autrefois convict, principle of---Scope---Question of quantum of sentence--- Principle of autrefois acquit and autrefois convict contained in S.403(1) Cr.P.C. had no relevance to a case wherein the question under consideration in an appeal was not as to whether a new trial of the convict should be held or not, but as to the quantum of sentence for a con vict---Reduction of sentence from death to imprisonment for life of a convict, who had served out the sentence of 25 years during the pendency of the legal remedy, could not seek refuge under the doctrine of autrefois acquit and autrefois convict contained in Art. 13(a) of the Constitution.

Hasan and others v. The State PLD 2013 SC 793 ref.

(b) Constitution of Pakistan---

---Art. 13(a)---Double jeopardy, doctrine of---Scope---Variation of sentence by Appellate Court--- Variation of sentence of a convict could not be termed as double jeopardy and did not attract Art.13(a) of the Constitution, which could only be applied, if the convict was exposed to a new trial.

Hasan and others v. The State PLD 2013 SC 793 ref.

(c) Penal Code (XLV of 1860)---

----S. 302(b)---Qatl-i-amd---Conviction---Death sentence reduced/ commuted to imprisonment for life---Convict sentenced to death undergoing a period of custody equal to or more than a full term of imprisonment for life during the pendency of his legal remedy against his conviction---Death sentence of such convict could be commuted to life imprisonment, but not on the sole ground that he remained incarcerated in the death cell for a lengthy period of time---Court also had to consider other factors to reduce the quantum of sentence.

Dilawar Hussain v. The State 2013 SCMR 1582 and Hasan and others v. The State PLD 2013 SC 793 ref.

(d) Constitution of Pakistan---

----Art. 188---Supreme Court Rules, 1980, O. XXVI, R. 9---Second review petition filed before the Supreme Court---Maintainability--- O.XXVI, R.9 of the Supreme Court Rules, 1980 barred a second review petition---Supreme Court had already recorded findings against the convict by dismissing his appeal and (first) review petition--- Convict through a second review petition could not re-agitate the matter---Second review petition was dismissed accordingly.

(e) Constitution of Pakistan---

---Arts. 184, 187 & 188---Power of Supreme Court to revisit its earlier decision or depart from it---Scope---Constitution did not impose any restriction or bar on the Supreme Court to revisit its earlier decisions or even to depart from them, nor the doctrine of stare decisis would come in its way so long as revisiting of the judgment was warranted, in view of the significant impact on the fundamental rights of citizens or in the interest of public good-Supreme Court had absolute powers to re-visit, to review and/or to set aside its earlier judgments/orders by invoking its suo motu jurisdiction under Arts. 184(3), 187 or 188 of the Constitution-Powers of the Supreme Court to exercise its inherent jurisdiction under the said Articles of the Constitution were not dependent upon an application of a party.

PLD 2013 SC 829 ref.

(f) Constitution of Pakistan---

----Art. 199(5)-Constitutional petition-Judgment of Supreme Court challenged by way of a constitutional petition before the High Court-Maintainability- Bar under Art.199(5) of the Constitution, prohibited issuance of a writ against the Supreme Court and the High Court or by any other collateral proceeding.

(g) Penal Code (XLV of 1860)---

---S. 302(b)---Constitution of Pakistan, Arts. 185(3) & 188-Qatl-i-amd-Conviction-Death sentence---Delay in carrying out death sentence-Not a mitigating factor to reduce death sentence to imprisonment for life-Convict sentenced to death undergoing a period of custody equal to or more than a full term of imprisonment for

life having exhausted/lost all legal remedies against his death sentence-Delay caused by the executive in executing death sentence of convict was not a ground to invoke the principle of expectancy of life to reduce his death sentence to imprisonment for life.

Hasan and others v. The State PLD 2013 SC 793 ref.

Sardar Latif Khan Khosa, Senior Advocate Supreme Court for Petitioners (in Crl.R.P.76 of 2008).

Iltaf Ellahi Sheikh, Senior Advocate Supreme Court and Syed Rifaqat Hussain Shah, Advocate-on-Record for Petitioners (in C.A.1262 of 2014).

Syed Iqbal Hussain Shah Gillani, Advocate Supreme Court for Petitioners (in CrI.M.A.371-L of 2014).

Syed Hamid Ali Bukhari, Senior Advocate Supreme Court and Tariq Aziz, Advocate-on-Record for Respondents (in Crl.R.P.76 of 2008).

Complainant in Person (in C.A.1262 of 2014). Ahmed Raza Gillani, APG(Pb) for the State.

Date of hearing: 10th November, 2014.

JUDGMENT

Crl. R.P. No.76 of 2008

AMIR HANI MUSLIM, J.---The petitioner has filed Second Criminal Review Petition, challenging the order dated 6-3-2008 by which his 1st Criminal Review Petition No.12 of 2001, w-as dismissed and the judgment dated 28-2-2001, in Criminal Appeal No.23 of 1997, awarding him death sentence was maintained. It is contended by Sardar Muhammad Latif Khan Khosa, learned Sr. Advocate Supreme Court that the petitioner was tried in Crime No.160/ 1989 dated 29-10-1989, under section 302, P.P.C. registered at Police Station Saddar Beroni, Rawalpindi, on the charge of murder of one Nazir Akhtar and was convicted and sentenced to death with fine of Rs.50,000 to be paid to the legal heirs of the deceased on recovery and, in case of default to undergo imprisonment for a further term of two years.

2. The petitioner filed Criminal Appeal No.5 of 1991, before the Lahore High Court, Rawalpindi Bench, Rawalpindi, which was dismissed on 19-10-1995 with partial modification in the quantum of sentence, by commuting the death sentence of the petitioner to that of life imprisonment with the benefit of section 382-B, Cr.P.C. The petitioner, challenged his conviction through Criminal Petition No.172 of 1995, whereas the complainant filed Criminal Petition No.1 of 1996, for enhancement of the sentence of the petitioner from life imprisonment to death penalty before this Court. On 2-2-1997, this Court allowed the Petition and granted leave to appeal in both the cases. The Appeal of the petitioner was numbered as Criminal Appeal No.22 of 1997,

whereas the appeal of the complainant was numbered as Criminal Appeal No.23 of 1997. On 28-2-2001, this Court dismissed the Criminal Appeal of the petitioner and allowed the Criminal Appeal of the complainant reversing the findings of the Lahore High Court by maintaining death sentence of the petitioner. On 6-3-2008, the petitioner filed Criminal Review Petition No.12 of 2001, which was also dismissed by this Court. The petitioner through these proceedings, has filed 2nd Criminal Review Petition No.76 of 2008, inter alia, on the ground that the petitioner had already served out his sentence of 25 years on 15-7-2000, when his appeal was pending in this Court but was not released from the Jail, on account of the pendency of appeal of the complainant. The learned counsel for the petitioner contended that in view of the principles laid down by this Court in the cases of Dilawar Hussain v. The State (2013 SCMR 1582) and Hasan and others v. The State (PLD 2013 SC 793), the petitioner's sentence of death be converted into life imprisonment and the petitioner be ordered to be released forthwith as he has already served out his sentence of life imprisonment on 15-7-2000. According to the learned counsel the judgment dated 28-2-2001 of this Court, by which the petitioner was awarded death penalty, needs to be reviewed as the issue of petitioner's serving the life imprisonment during the pendency of the appeal before this Court, has not been taken note of by this Court.

3. He next contended that 2nd Criminal Review Petition is no bar as the issue raised by the petitioner relates to his life, which is guaranteed under Article 9 of the Constitution. The learned counsel contended that in such like cases, this Court in exercise of its inherent jurisdiction under Article 187(1) of the Constitution is required to do complete justice, which must prevail, ignoring technicalities. According to the learned counsel, the petitioner can file 2nd Criminal Review Petition 'as this Court has the power to correct the error floating apparent on the surface of the order passed in 1st Criminal Review Petition.

4. The learned counsel next contended that the death sentence of the petitioner was not confirmed by the learned High Court in terms of section 376, Cr.P.C. while dismissing his appeal. According to the learned counsel, once legal sentence of life imprisonment had been served out by the petitioner, this Court was in error in enhancing the sentence of the petitioner from life imprisonment to death sentence, overlooking the doctrine of life expectancy and the principles vocalized by this Court. The learned counsel then referred to the principles of curative and remedial justice and in support of his contention has relied upon the judgments in the cases of Lt. Col. Nawabzada Muhammad Amir Khan v. The Controller of Estate Duty, Government of Pakistan, Karachi and another (PLD 1962 SC 335) and Rupa Ashok Hurra v. Messrs Birla Textiles and another (AIR 2002 SC 1771).

5. The learned counsel for the petitioner further contended that the petitioner has been discriminated as on the date of dismissal of Review Petition, another Bench of this Court had granted leave on the similar point and, therefore, the petitioner's right to 2nd Review Petition is covered by Article 25 of the Constitution.

Maintainability of 2nd Review Petition

6. The Supreme Court has been conferred the powers to review its judgment or order under Article 188 of the Constitution which is subject not only to the provisions of any Act of Parliament but also to the provisions of any Rule made by the Supreme Court. A regular judicial order passed by a Bench of the Supreme Court, after hearing the Counsel for the parties, can only be reviewed or set aside in Review jurisdiction as provided in Order XXVI of the Supreme Court Rules, 1980, which Rules are framed under Article 191 of the Constitution. A party has the right to file Review Petition as per the provisions of Article 188 of the Constitution, in terms of Order XXVI Rule 1 of the Supreme Court Rules 1980, subject to all the limitations prescribed by law including the parameters of the review jurisdiction laid down by this Court. Order XXVI Rule 9 of the Supreme Court Rules mandates that "After the final disposal of the first application for review no subsequent application for review shall lie to the Court and consequently shall not be entertained by the Registry". The remedy of Review Petition cannot be sought as a matter of right, as it is a discretionary relief.

7. Sardar Latif Khan Khosa, the learned counsel for the petitioner has conceded that the petitioner has filed 2nd Criminal Review Petition after the dismissal of his 1st Criminal Review Petition on 6-3-2008. According to the learned counsel, the petitioner's right to file 2nd Criminal Review Petition had accrued after the judgment of this Court in the case of Dilawar Hussain (supra) in which a larger Bench of this Court had held that Dilawar Hussain was entitled to lesser penalty as he being incarcerated in the death cell for quite a long term of 18 years and earned remissions almost for the same period, has acquired expectancy of life and keeping this factor in consideration, the Hon'ble larger Bench of this Court, commuted the death sentence of Dilawar Hussain to that of life imprisonment. The case of Dilawar Hussain decided by the larger Bench of this Court does not lay the principles of lesser penalty as sole mitigating circumstance in a case if the convict had undergone one of the legal sentences during the pendency of his Appeal before this Court or before the High Court. In fact, in the case of Abdul Malik and others v. The State (PLD 2006 SC 365) this Court had held that serving out the sentence during the pendency of Appeal or Revision, itself would not constitute a bar against enhancement of sentence and that any exercise to that effect, would not be violative of Article l.(a) of the Constitution. This could, however, be considered to be one factor which the Court may consider along with other circumstances while deciding the quantum of sentence of a convict. In the case of Abdul Malik (supra), it was further held that the question of sentence primarily is a matter of judicial discretion, to be exercised in the first instance by the trial Court. The Court of Appeal can enhance the sentence, if the same is found to be inadequate or not in accordance with the judicial principles laid down by the superior Courts in this regard. In fact, awarding of sentence depends upon the circumstances of each case and it was found to be undesirable to lay down principles of general application. In the judgment of Abdul Malik (supra) this Court has concluded that Article 13(a) of the Constitution does not lay a bar against enhancement and final-determination of sentence by the appellate Court established under the law.

8. The question before this Court is whether the death sentence of a convict, who has undergone a period of custody equal to or more than a full term of imprisonment for life, during the pendency of his legal remedy against his conviction, could be maintained by this Court, despite the fact that he had already served out one of the two

legal sentences provided under section 302(b), P.P.C. The plea of the convict was that in such like situation the Supreme Court must not affirm the sentence of death and may reduce the same to imprisonment for life in view of the provisions of section 403(1), Cr.P.C. It was contended that section 403(1), Cr.P.C. bars a new trial after conviction or acquittal on the basis of similar facts, which had attained finality, but the said principle has no application to the situation where holding of a new trial was not an issue. The principle of autrefois acquit and autrefois convict contained in section 403(1), Cr.P.C. has no relevance to a case wherein the question under consideration in an appeal is not as to whether a new trial of the convict should be held or not, but as to the quantum of sentence for a convict. This Court in the case of Hasan (supra) has also examined the provisions of Article 13(a) of the Constitution and has held that reduction of sentence from death to imprisonment for life of a convict, who had served out the sentence of 25 years during the pendency of the legal remedy, could not seek refuge under the doctrine of autrefois acquit and autrefois convict contained in Article 13(a) of the Constitution. It was clarified that the variation of sentence of a convict could not be termed as double jeopardy and does not attract Article 13(a) of the Constitution, which could only be applied, if the convict is exposed to a new trial.

9. This Court in the case of Dilawar Hussain (supra) had commuted the sentence of Dilawar Hussain from death to life imprisonment, not on the sole ground that the convict remained incarcerated in the death cell for 18 years but also considering other factors to reduce the quantum of sentence. It was noticed in the case of Dilawar Hussain (supra) that the intent of the convict was not to take away the life of the deceased, which was gathered from his action of having fired a shot on the lower part of the body of the deceased. These circumstances, on consideration, led this Court to commute his death sentence into life imprisonment. The contention of the learned Counsel that the case of the petitioner was covered by the judgment of Dilawar Hussain (supra), is not correct.

10. There is yet another judgment of this Court in the case of Hasan (supra) where this Court has enunciated the principles of life expectancy, which directly covers the points raised before us. Paragraph No.22 of the judgment in the case of Hassan (supra) lays the parameters which exclude the principles of life expectancy of a convict/condemned prisoner. It deals with two categories of the convicts/condemned prisoners (i) the first category relates to the convict/ condemned prisoner, who on account of delay caused by the executive, in processing and or in deciding a condemned prisoner's mercy petition or in executing his sentence of death after his judicial remedies have been exhausted, (ii) 2nd category relates to a convict/ condemned prisoner, who himself is demonstrably and significantly responsible, for the delay occasioned in conclusion of his judicial remedies. In rest of the cases a convict/condemned prisoner can be extended concession of lesser sentence from death to life imprisonment, if he has been incarcerated for a period equal to or more than a life imprisonment on account of principles of expectancy of life, treating it as one of the factors towards mitigating circumstances. However, it is completely misconceived that every convict or condemn prisoner, who was sentenced to death or life imprisonment and had served full term of imprisonment for life during the pendency of his legal remedies against his conviction, cannot be awarded death penalty, if other factors so warrant.

11. Even in the case of Hasan (supra) this Court, while commuting the death sentence of the convict to that of life imprisonment, did consider other relevant factors, in addition to the period of incarceration in Jail, in awarding lesser sentence. Therefore, the parameters laid down in the case of Hasan (supra) are directly applicable to the case of the petitioner, who had exhausted all his legal remedies and because of non-processing of his case for any reason by the executive, his sentence has not been executed.

12. The question of maintainability of the 2nd Criminal Review Petition on the ground that this Court has to do complete justice by invoking Article 187(1) of the Constitution is also misconceived. The provisions of Article 187(1) cannot be attracted in the present case, as this Court has already recorded findings against the petitioner by the Judgment dated 28-2-2001, against which review was also dismissed and there was no 'Us' pending before this Court warranting exercise of its jurisdiction under Article 187(1) of the Constitution, besides Rule 9 of the Order XXVI of the Supreme Court Rules, bars 2nd Review Petition. There is a distinction between right of a party to approach the Court and jurisdiction of the Court to do complete justice on its own. Once this Court has finally determined the right of the petitioner in the judgment dated 28-2-2001, holding him guilty, the petitioner through 2nd Review Petition, cannot re-agitate it. If such a Review Petition is allowed to be entertained, it will land in a situation where findings of this Court against a party will never attain finality.

13. This, however, does not mean that the jurisdiction of this Court is barred by any restriction placed by the Constitution; there is no Article in the Constitution which imposes any restriction or bar on this Court to revisit its earlier decision or even to depart from them, nor the doctrine of stare decisis will come in its way so long as revisiting of the judgment is warranted, in view of the significant impact on the fundamental rights of citizens or in the interest of public good. This issue was fully comprehended and answered in the case titled Regarding pensionary benefits of the Judges of Superior Courts from the Date of their respective retirements, irrespective of their length of service as such Judges (PLD 2013 SC 829 at page 993). The relevant portions are reproduced herein below:--

> 3. My learned brother has exhaustively dealt with the question of maintainability, which is a threshold proposition of the matter, and in this behalf extensive reference to the case-law has also been made. I therefore have no intention to add any superfluity to that, however, my approach to the proposition is quite simple, plain and facile, in that, the Supreme Court of Pakistan is the apex Court of the country. It is the final, the utmost and the ultimate Court, inter alia, in relation to, (a) resolving disputes inter se the parties before it, (b) securing and enforcing the fundamental rights of the citizen/person, when those (rights) are in issue before the Court, in any of its jurisdiction, either original or appellate or suo motu, (c) the interpretation and the enunciation of the law of the land, (d) examining and adjudging the legislative Acts and the executive order/actions of the State, in the exercise of its power of judicial review, (e) the exercise of original jurisdiction as per the mandate of Article 184 of the Constitution, (f) the advisory jurisdiction within the parameter of Article 186 of the Constitution, (g) the review of its decision

(judgments) (see Article 188) (h) a special jurisdiction conferred upon this Court by any law. And above all the power to do complete justice (see Article 187). In terms of Article 189 of the Constitution, "Any decision of the Supreme Court shall, to the extent that it decides question of law or is based upon or enunciates a principle of law, (emphasis supplied) be binding on all other courts in Pakistan". Moreover, according to Article 190 "All executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court"

4. The aforestated legal position explains and highlights the true magnitude and the supremacy of this Court in regard to the dispensation of justice in the country and the enunciation and the declaration of the law by it. As the law laid down by the (apex) Court, and the order(s) passed by it, being the paramount and ultimate in nature, has to be imperatively and mandatorily followed, obeyed and adhered to by all the concerned. Reading Articles 189 and 190 conjointly, and while keeping in view the scheme of the Constitution, the very purpose, the pivotal position and the status of this Court (prescribed above), it is expedient that correct -law should be pronounced by the apex Court. And pursuant to the above object and due to the venerated position of this Court, the Court is cumbered with, inviolable responsibility, and a sacred duty, to interpret, declare and enunciate the law correctly, so that it should be followed, obeyed and adhered to purposively and in letter and spirit, by all the other organs of the State (including all other Courts in Pakistan) strictly inconsonance with the true aim of the aforementioned Articles. It may be pertinent to mention here, that any invalid enunciation of law, shall contravene and impugn the very character, and attribute(s) of this Court and such bad/wrong law shall cause drastic adverse effects on the socioeconomic, political, geographical, ethnic, cultural aspects and dynamics of the nation, the society, the people at large and the State in presentee or in futurio. In the above context, reference can also be made to Article 4 of the Constitution which enshrines (inter alia) an inalienable right of every citizen to be dealt with in accordance with the law, obviously this shall mean the law that is, correctly laid down by this Court. As it is a cardinal principle of justice, that the law should be worn by the Judge in his sleeves and justice should be imparted according to the law, notwithstanding whether the parties in a lis before the Court are misdirected and misplaced in that regard. Therefore, if any law which has been invalidly pronounced and declared by this Court, which in particular is based upon ignorance of any provisions of the Constitution, and/or is founded on gross and grave misinterpretation thereof; the provisions of the relevant law have been ignored, misread and misapplied; the law already enunciated and settled by this Court on a specific subject, has not been taken into account, all this, inter alia, shall constitute a given judgment(s) as per incuriam; and inconsistent/conflicting decision of this Court shall also fall in that category. Such decision undoubtedly shall have grave consequences and repercussions, on the State, the persons/ citizens, the society and the public at large as stated above. Therefore, if a judgment or a decision of this Court which is found to be per incuriam (note: what is a judgment per incuriam has been dealt with by my brother), it shall be the duty of this Court to correct such wrong verdict and to set the law right. And the Court should not shun from such a duty (emphasis

supplied). For the support of my above view, I may rely upon the law laid down in the dicta Lt. Col. Nawabzada Muhammad Amir Khan v. The Controller of Estate Duty, Government of Pakistan, Karachi and others (PLD 1962 SC 335 at page 340):--

"Where, however, there is found to be something directed by the judgment of which review is sought which is in conflict with the Constitution or with a law of Pakistan, there it would be the duty of the Court, unhesitatingly to amend the error. It is a duty which is enjoined upon every Judge of the Court by the solemn oath which he takes when he enters upon his duties, viz., to "preserve, protect and defend the Constitution and laws of Pakistan" But the violation of a written law must be clear."

M. S. Ahlawat v. State of Haryana and another (AIR 2000 SC 1680):--

"15. To perpetuate an error is no virtue but to correct it is a compulsion of judicial conscience."

Bengal Immunity Co. Ltd., v. State of Bihar and others (AIR 1955 SC 661):--

"19. Reference is made to the doctrine of. finality of judicial decisions and it is pressed upon us that we should not reverse our previous decision except in cases where a material provision of law has been overlooked or where the decision has proceeded upon the mistaken assumption of the continuance of a repealed or expired statute and that we should not differ from a previous decision merely because a contrary view appears to us to be preferable.

It is needless' for us to say that we should not lightly dissent from a previous pronouncement of this court. Our power of review, which undoubtedly exists, must be exercised with due care and caution and only for advancing the public well being in the light of the surrounding circumstances of each case brought to our notice but we do not consider it right to confine our power within rightly fixed limits as suggested before us.

If on a re-examination of the question we come to the conclusion, as indeed we have, that the previous majority decision was plainly erroneous then it will be our duty to say so and not to perpetuate our mistake even when one learned Judge who was party to the previous decision considers it incorrect on further reflection (emphasis supplied by me).

In Superintendent and Remembrancer of Legal Affairs, West Bengal v. Corporation of Calcutta (AIR 1967 SC 997) it is held:-

"If the aforesaid rule of construction accepted by this Court is inconsistent with the legal philosophy of our Constitution, it is our duty to correct ourselves and lay down the right rule (emphasis supplied by me). In constitutional matters which affect the evolution of our policy, we must more readily do so than in

other branches of law, as perpetuation of a mistake will be harmful to public interests. While continuity and consistency are conducive to the smooth evolution of the rule of law, hesitancy to set right deviations will retard its growth. In this case, as roe are satisfied that the said rule of construction is inconsistent without republican polity and, if accepted, bristles with anomalies, we have no hesitation to reconsider our earlier decision."

The question, however, shall be as to how this duty should be discharged and the object of correcting the wrong law, and setting it (the law) right should be achieved. One of the obvious ways of doing so is, when a party to the lis seeks review of the wrong judgment in terms of Article 188 of the Constitution. But what, if that remedy is not availed for any reason, or even if availed by the concerned, is discarded by the Court (again by committing an another wrong). Whether thereafter, such a wrong decision on the point of law, cannot be remedied and interfered with, revisited or set aside at all or in other words, even if a judgment which is patently per incuriam, infinitely should be left outstanding, allowing it to become the liability of this Court and our legal/judicial system, for all future times. And the (this) Court and the system should be fettered by it, and held as a captive thereto, leaving it intact to pervade and permeate serious prejudice in perpetuity to the persons/ citizens of the country and even the State, compelling them, to be dealt with by a wrong/invalid law, despite it having come to the notice of the Court, through any means whatsoever, that such decision suffers from patent and gross vice, and it is vividly a judgment per incuriam by all references. The answer is "No". In my candid view the approach to leave such a decision to stay intact shall be ludicrous and shall lead to drastic effects as indicated above. Rather in such a situation this Court, having special position in our judicature (judicial system as highlighted above) shall have the inherent, intrinsic and inbred power (jurisdiction) vested in it, (a) to declare a judgment per incuriam; (b) decline to follow the same as a valid precedent, (c) and/or to set it aside. For the exercise of jurisdiction in, that regard and for the discharge of the duty as mentioned earlier, it is absolutely irrelevant and immaterial vide (via) which source it (decision) has come to the notice of the Court. The Court once attaining the knowledge of such a blemished and flawed decision has the sole privilege, to examine the same and to decide about its fate, whether it is per incuriam or otherwise. In this context, it may be mentioned, for example, if while hearing some case, it is brought to the attention of the Court by the member(s) of the Bar; or during the hearing of any matter, the Court itself finds an earlier judgment to be per incuriam; or if a Judge (Judge of this Court) in the course of his study or research, comes across any judgment which in his view is per incuriam or if any information through the Registrar of the Court is passed on to the honourable Chief Justice of the Court or to any other Judge (of this Court), by any member of the Bar, or the member of the civil society (any organization/group of the society) that a judgment is per incuriam (note: without the informant having any right or locus standi of hearing or the audience, until the matter is set out for hearing in the Court and the Court deems it proper to hear him), the Court in exercise of its inherent suo motu power and the duty mentioned above (emphasis supplied) shall have the due

> authority and the empowerment to examine such a judgment, in order to ascertain and adjudge if the law laid down therein is incorrect or otherwise. And if the judgment is found to be per incuriam, it shall be dealt with accordingly. In such a situation (as earlier stated) it shall not be of much significance, as to who has brought the vice of the judgment to the notice of the Court or through which channel it has reached there. Rather, the pivotal aspect, the object, the concern and the anxiety of this Court should be to examine the judgment and if it is per incuriam to set the law right with considerable urgency.

On perusal of the paragraphs referred to hereinabove, we can safely reach a conclusion that this Court has absolute powers to re-visit, to review and or to set aside its earlier judgments/orders by invoking its Suo Motu Jurisdiction under Articles 184(3), 187 or 188 of the Constitution. The Powers of this Court to exercise its inherent jurisdiction under the above referred Articles of the Constitution are not dependant upon an application of a party.

14. The learned counsel has contended that the petitioner has the fundamental rights, under Articles 9 and 25 of the Constitution to seek protection of his liberty as a citizen of this country. We are not persuaded by this contention of the learned Advocate Supreme Court of the petitioner. The protection of the term "liberty" used in this Article would not cover the petitioner, who was convicted by this Court, and had exhausted all the legal remedies available in law, against his conviction and sentence. The findings of this Court against the petitioner had attained finality, which could not be undone on the basis of the judgment in the case of Dilawar Hussain (supra) which came, later in time, and had distinct facts. Therefore, the contention of the learned Advocate Supreme Court that Article 9 of the Constitution protects the life and liberty of the petitioner is without force. As far as the discrimination under Article 25 of the Constitution is concerned, the petitioner has not been discriminated against at all. This Court has decided his case on the basis of the material produced at trial. The petitioner could not plead discrimination of lesser sentence by relying on the case of Dilawar Hussain (supra), as every case needs to be decided on its own merits and the decision of one case will not regulate the quantum of sentence in the other case, nor it could attract the term 'discrimination' as used in Article 25 of the Constitution.

15. For the aforesaid reasons, we hold that 2nd Criminal Review Petition of the petitioner is not competent and the judgment dated 28-2-2001, in Criminal Appeal No. 23/1997, and the order dated 6-3-2008 in Criminal- Review Petition No.12/2001, passed by this Court having attained finality, cannot be impugned once the petitioner has exhausted all his legal remedies. Mere delay on the part of executive to execute the sentence of the petitioner would not give him a right to approach this Court and have his decision reversed on the aforestated grounds.

Civil Appeal No.1262/2014

16. The appellant was tried in Crime No.163/1997 under sections 302, 324, 109 and 34, P.P.C. registered at Police Station Qaim Pur, District Bahawalpur, along with four co-accused for causing murder of Liaquat Ali and injuries to Mst. Jindan, Tahir and

Nawaz. On 23-12-2004, learned trial Court while acquitting the co-accused, convicted the appellant under section 302(b), P.P.C. and sentenced him to death with fine of Rs.1,00,000. The appellant filed Criminal Appeal No.373/2004, whereas the complainant filed Criminal Appeal No.105 of 2005 against the acquittal of the four co-accused before the Lahore High Court, Lahore. On 8-4-2009, the Criminal Appeals filed by both the parties were dismissed maintaining the death penalty of the appellant. The appellant filed Criminal Petition No. 280 of 2009, challenging the judgment dated 8-4-2009 of the learned High Court, which too, was dismissed on 3-7-2009. On 11-11-2009, Review Petition filed by the appellant was also dismissed.

17. On 19-5-2014, the appellant filed Writ Petition No.3280/2014/BWP, before the Lahore High Court, Bahawalpur Bench, praying therein that his death sentence maintained by this Court in Criminal Appeal No.373/2004, be commuted into life imprisonment, in view of the judgment in the case of Dilawar Hussain (supra). On 7-5-2014, the Writ Petition was dismissed by the learned High Court against which the appellant filed Civil Petition No.1108/2014, in which petition on 6-9-2014, leave to appeal was granted by this Court.

18. The learned counsel for the appellant has contended that after the judgment in the case of Dilawar Hussain (supra), the appellant has acquired the right to challenge the quantum of his sentence. He submitted that the appellant had filed a Constitution Petition as the 2nd Review Petition was barred. He next contended that the appellant remained in Jail for more than 17 years and, therefore, he has already undergone the sentence of life imprisonment by now. He next contended that now, in' view of the judgment in the case of Dilawar Hussain (supra) the appellant's capital punishment of death be commuted to life imprisonment as the appellant has already undergone one of the legal sentences. At the end, he contended that the death penalty awarded to the appellant, which was maintained by this Court in its judgment dated 3-7-2009, can be commuted on compassionate ground as he was juvenile at the time of his arrest, as such he is entitled to lesser sentence.

19. In this appeal, the appellant has not filed a 2nd Review Petition before this Court but instead, has filed a Writ Petition before the High Court challenging the judgment of this Court dated 3-7-2009, passed in Criminal Petition No.280/2009, in which Review Petition was also dismissed on 11-11-2009. In the first place, the judgment of this Court cannot be challenged either by a Writ Petition as there is a bar under I Article 199(5) of the Constitution, which prohibits issuance of a Writ against the Supreme Court and the High Courts or by any other collateral proceeding.

20. The learned High Court dismissed the Writ Petition of the appellant, against which he filed Civil Petition 1;10.1108 of 2014 before this Court, in which leave to appeal was granted on 16-9-2014. The contention of the learned counsel for the appellant that he acquired the right to challenge the quantum of sentence on the basis of the judgment of this Court in the case of Dilawar Hussain (supra), is misconceived for the reasons, we have already recorded in the case of petitioner Khalid Iqbal. The Criminal Appeal of the appellant was dismissed on 3-7-2009, maintaining his death sentence, against which Criminal Review. Petition was also dismissed on 11-11-2009. The appellant has exhausted all his remedies before the judicial fora and was finally convicted on the

basis of the material brought before the Courts. The judgment of this Court has attained finality and delay in execution of sentence could hardly be made a ground to invoke the principle of expectancy of life as detailed in the case of Hasan (supra). The case of the appellant stands on similar footing as of the case of the Petitioner-Khalid Iqbal, except that the appellant had filed a Writ Petition before the High Court whereas the petitioner-Khalid Iqbal, has filed a 2nd Criminal Review Petition before this Court.

21. We, for the aforesaid reasons, dismiss the Criminal Review Petition filed by the petitioner Khalid Iqbal as well as the Appeal filed by the appellant-Muhammad Murad.

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22. Through this Civil Miscellaneous Application No.371-L/2014, the petitioner seeks permission of this Court to change the Advocate Supreme Court as well as the AOR in order to pursue the Criminal Review Petition No. NIL/2014, in Criminal Petition No.50-L/2002. The judgment sought to be reviewed was heard and decided on 2-12-2002. The present proceedings have been filed on 8-9-2014, after an inordinate delay of more than 12 years, inter alia, on the ground that after the judgment in the case of Dilawar Hussain (Supra), the petitioner was also entitled to lesser sentence and, therefore, his death sentence should be commuted to that of life imprisonment as he has been incarcerated in Jail for more than 25 years and has served one of the legal sentences i.e. life imprisonment.

23. We have already held hereinabove that if a convict or condemned prisoner has exhausted all .the legal remedies provided under the law and his conviction has attained finality, he would not be entitled to plead such a ground towards mitigating circumstances for lesser Punishment. The application seeking permission does not disclose the dates of death of the Advocate Supreme Court or Advocate-on-Record, representing the petitioner. Even otherwise, an application of such nature would have far reaching effects on the concept of finality attached to the judgment of this Court. We, in these peculiar circumstances of the case, cannot allow this application to permit any other counsel to appear and plead the case of the petitioner in a Review Petition after an inordinate delay of 12 years. This Criminal Miscellaneous Application is dismissed.

MWA/K-5/SC Order accordingly.

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