

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE GULZAR AHMED
MR. JUSTICE DOST MUHAMMAD KHAN
MR. JUSTICE QAZI FAEZ ISA

Criminal Appeal No.6-P of 2015

(On appeal from the judgment dated
19.12.2013 passed by the Peshawar High
Court, Peshawar in Cr.R.42-M of 2013)

Irfan and Mehboob Ali

....Appellants

Versus

Muhammad Yousaf and another

....Respondents

For the appellants: Mr. Altaf Samad, ASC

For the State: Mr. Aslam Ghuman, ASC for A.G. KPK

Date of hearing: 6.4.2016

JUDGMENT

Dost Muhammad Khan, J.— Through this appeal with the leave of the Court dated 6.3.2015, the appellants have questioned the legality and propriety of the judgment of the Peshawar High Court dated 19.12.2013 whereby Criminal Revision Petition No.42-M of 2013, filed by the appellants was dismissed and the prayer for accepting the compromise, affected between the parties was declined in the manner, as was done by the Trial Court.

We have heard the learned ASC for the appellants and Mr. Aslam Ghuman, learned ASC appearing on behalf of A.G. KPK and have gone through the record.

2. It is an admitted position that the trial Court, upon conviction, awarded death sentence on one count to the appellants albeit it was stated in the judgment that the conviction so awarded u/s 302(b) PPC shall be read with s.7 (a) ATA.

3. Both the appellants were charged for causing the death of Mst. Naheed through strangulation as she was an obstacle in the way of one of the appellants, namely Irfan, who had developed love affairs with Mst. Ghazala, however, further allegations were made that 15 tolas gold ornaments and cash amount of Rs.65,000/- was also taken away by the appellants. Case F.I.R No.1266 was registered on 30.12.2004 u/Ss.302, 404/34 PPC read with s.7(a) ATA by Police Station, Mingora, District Swat. After conviction, the appellants filed appeal before the Peshawar High Court, however, while partly allowing the appeal, their sentence was reduced to life imprisonment but only u/s 302 PPC and nothing was said in the judgment or in the Reference sent by the Trial Court that the death sentence u/s 7 (a) ATA was confirmed. Probably, the Division Bench of the High Court was mindful that they were convicted u/s 302 PPC on a single count and no sentence of death was awarded u/s 7 ATA.

4. Similarly, this Court while dismissing their leave petition, did not take notice of this omission, made by the Trial Court and then by the High Court because in the judgment of this Court too, the sentence of life imprisonment u/s 302(b)/34 PPC and the imprisonment of three years R.I. with fine of Rs.50,000/- each u/s 404 PPC alone was maintained with further modification.

5. Although it was an omission on the part of the Trial Court, not awarding separate sentence u/s 7 (a) ATA but that legal error was not corrected or to say rectified by the High Court nor by this Court in its judgment dated 24.03.2009 therefore, for all legal intents and purposes it shall be construed without exception that both the appellants were convicted only u/s 302(b)/34 PPC read s.404 PPC.

6. Under the provisions of s.367 (2) and (3) Cr.P.C. it is mandatory for the Court that after finding the accused guilty of one or more offences, upon recording conviction, separate sentence must be clearly awarded to the accused so convicted otherwise it would be illegal being in violation of the mandatory provisions cited above. In this case, no separate sentence was awarded to the appellants u/s 7(a)ATA by the Trial Court or the High Court, as explained above. This legal aspect of vital importance, conveniently escaped from the notice of the Trial Court and the learned High Court in the second round when the appellants were seeking acquittal on the basis of compromise u/s 302(b) PPC alone, because it cannot be construed nor it is permissible under the law to hold that the appellants were impliedly sentenced to imprisonment for life u/s 7(a) ATA as well. The provision of s.367 Cr.P.C provides that the Court determine first the guilt of the accused and then to pass judgment of conviction whereafter the sentence shall follow.

Being inseparable and integral part of conviction, unless specifically awarded, it cannot be assumed to the prejudice of the accused that he/they were also sentenced u/s 7 (a) ATA by applying the rule of implication because the law provides the passing of specific sentence for a distinct offence and if it is not awarded, it cannot be construed that same was impliedly awarded as the very judgment to that extent becomes illegal and violative of the mandatory provisions of sub-sections (2) and (3) of S.367 Cr.P.C.

7. Both the offences u/Ss.302 and 404 PPC are compoundable and when the State/Prosecution has not taken any exception to the legal error, so committed by the Trial Court and thereafter by the High Court in the first round of litigation then, at this

belated stage, it cannot agitate that the necessary modification be made in the conviction and sentences of the appellants and they be further convicted and sentenced u/s 7(a) ATA as well, because the matter is now past and closed transaction and cannot be re-opened.

8. Even otherwise, the applicability of s.7(a)ATA was a begging question because the ingredients constituting that offence are missing in the case, however, at this stage, we are not suppose to further discuss this aspect of the matter.

9. We are of the considered view that both the foras below have committed legal error by not accepting the compromise on the ground that the appellants were also charged and convicted by the Trial court u/s 7(a) ATA. The learned ASC for the State was unable to controvert this legal position, emerging out of the two judgments, referred to above and when he was asked that what the State would gain if the compromise is refused, when the legal heirs of the deceased have received a handsome compensation amount as *Diyat* from the appellants, he was unable to satisfy the Court in any manner.

Accordingly, this appeal is allowed. Both the impugned judgments of the learned Courts below are set aside and the case is sent back to the learned Trial Court, who, after verifying the genuineness of the compromise to its satisfaction shall accept the same and acquit the appellants on the basis thereon.

JUDGE

JUDGE

JUDGE

Islamabad, the
6th April, 2016
Nisar /-

Approved for reporting.