

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Sarmad Jalal Osmany
Mr. Justice Qazi Faez Isa

Criminal Appeal No. 248 of 2009

(Against the judgment dated 20.05.2009 passed by the Peshawar High Court, Abbottabad Bench in Criminal Revision No. 1 of 2008)

Gulraiz

...Appellants

versus

The State, etc.

...Respondents

For the appellant:

Mr. Tariq Mehmood, Sr. ASC
Mr. Ghulam Mustafa Khan Swati,
ASC

For the State:

Mr. Muhammad Aslam Ghumman,
ASC

For the complainant:

Malik Muhammad Kabir, ASC

Date of hearing:

04.06.2015

JUDGMENT

Asif Saeed Khan Khosa, J.: We have heard the learned counsel for the parties at some length and have gone through the relevant record of the case with their assistance.

2. The appellant had been sentenced to death by the learned trial court and his sentence of death had been confirmed by the High Court whereafter an appeal filed by the appellant was

dismissed by this Court on 13.04.2005 and a review petition filed by the appellant was subsequently dismissed by this Court on 23.01.2007. The impugned judgment passed by the High Court shows that a mercy petition filed by the appellant has also been turned down by the President of Pakistan. After having exhausted all his judicial and executive remedies the appellant filed an application before the learned trial court seeking reduction of his sentence on the basis of a compromise with the widow of Abdul Jamil deceased but admittedly the said compromise was a partial compromise because the other heirs of the deceased had not waived or compounded the offence. The learned trial court dismissed the above mentioned application submitted by the appellant and later on a revision petition filed by the appellant before the High Court was also dismissed. Hence, the present appeal by leave of this Court granted on 04.06.2009.

3. It has already been declared by a Larger Bench of this Court in the case of Zahid Rehman v. The State (PLD 2015 SC 77) that a partial compromise between a convict and some of the heirs of the deceased cannot entail acquittal of the convict in a case of *Ta'zir* as by virtue of the provisions of subsection (2) of section 345, Cr.P.C. all the heirs of the deceased must enter into a compromise with a convict if such compromise is to have the effect contemplated by subsection (6) of section 345, Cr.P.C. The issue as to whether a partial compromise may provide a valid basis for reduction of a sentence of death to that of imprisonment for life came up for consideration before this Court in the case of Abdul Ghaffar v. The State (Criminal Appeal No. 589 of 2009 decided on 23.04.2015) and it had been held by this Court as follows:

"8. Once it is established that the offence has been committed by the accused the appropriate sentence is awarded to him/her, which in respect of *qatl-i-amd* as *ta'zir* could be either death or imprisonment for life. The section requires that the "*facts and circumstances of the case*" be considered in determining the appropriate sentence. A compromise with one or more of the heirs of the victim would in our opinion be amongst the *facts and circumstances of the case* that require to be taken into account in determining the quantum of punishment, but that in itself would

not be the conclusive factor as all the facts and circumstance of the case have to be considered. Merely because an heir has compromised with the convict would not automatically result in the imposition of the lesser punishment of imprisonment for life.

9. That having decided that a compromise with an heir of the victim may be a factor in determining the quantum of punishment we now proceed to consider whether in the facts and circumstances of each of these cases the sentences of death imposed by the trial court and which were upheld and confirmed by the High court should be reduced to imprisonment for life."

Keeping in view the law declared by this Court in the above mentioned cases we have attended to the facts and circumstances of the present criminal case and have observed that the appellant had acted in a cruel and brutal manner and his conduct was nothing short of being callous because he and his co-accused had murdered one person and had injured three others only when the deceased had prompted a Qari during the progress of *Traveeh* prayers in the holy month of Ramzan which prompting had been taken ill by the appellant. The place of occurrence was the courtyard of a mosque. In the absence of any background of ill-will or bitterness against the deceased and the injured victims the appellant had no justifiable reason to do what he did, meaning thereby that the appellant is a desperate person and it may be hazardous to let him loose on the society. All the facts and circumstances of the case which could arguably point towards mitigation of the appellant's sentence had failed to find favour with this Court when his appeal and review petition had been dismissed and his sentence of death had been maintained. The only fresh factor in this regard is the stated compromise between the appellant and the widow of the deceased which widow has already remarried and she had statedly received a sum of Rs. 4,60,000/- from the appellant on her own behalf as well as on behalf of a minor daughter of the deceased for the purposes of entering into a compromise. It is not disputed before us that both the parents of the deceased have resolutely refused to affect any compromise with the appellant so far. In the above mentioned peculiar background we have not found the stated partial compromise to be furnishing a

valid basis for reduction of the appellant's sentence of death to imprisonment for life. This appeal is, therefore, dismissed.

Judge

Judge

Judge

Islamabad

04.06.2015

Approved for reporting.

Arif