

Qazi Faez Isa, J:

Criminal Miscellaneous Application No. 1379 of 2017: This application has been submitted under section 345 of the Code of Criminal Procedure ("**the Code**") by the petitioners/convicts stating that the legal heirs of the deceased, who were murdered by the petitioners, have "forgiven" them. Therefore, they have prayed that, *"the petitioners may kindly be ordered to be released."*

2. The petitioners were convicted by the Additional Sessions Judge, Chiniot, under section 302(b) of the Pakistan Penal Code ("**PPC**"); Mureed Sultan was convicted for the murder of Muhammad Ameer and Nazeer Sultan for the murder of Allah Yar, and both of them were sentenced to death. The Trial Court sent the Murder Reference to the Lahore High Court for confirmation under section 374 of the Code whilst the petitioners/convicts preferred an appeal under section 410 of the Code. The High Court maintained their convictions but altered their sentences from death to imprisonment for life. The petitioners then preferred a criminal petition for leave to appeal before this Court and during the pendency of this petition a compromise was effected by the petitioners/convicts with the legal heirs of both the deceased and the application mentioned above was submitted. A report was sought from the District and Sessions Judge, Chiniot on August 28, 2017 to verify the legal heirs of the deceased and the genuineness of the compromise. The said Judge has confirmed the genuineness of the compromise and that all the legal heirs have affirmed it. Both the petitioners have remained incarcerated for about eight years and four months, which period excludes the remissions in sentences that they have respectively earned. I therefore agree with my learned brother that the said application

be accepted, however, I most respectfully cannot bring myself to agree that the conviction of the convicts/petitioners be "set aside" and they should be "acquitted of the charge".

3. Section 345 of the Code enables compounding of offences and sets out the methodology thereof. It mentions the offences punishable under the PPC which can be compounded either before or after an accused is convicted. The table contained in subsection (1) of section 345 specifies, "persons by whom offences may be compounded". But, subsection (5) of section 345 stipulates that once an accused has been convicted, "no composition for the offence shall be allowed without the leave of the Court before which the appeal is to be heard". Undoubtedly, the prescribed offences can be compounded, but the composition of such offences has to be in terms of subsection (6) of section 345 which stipulates that it "shall have the effect of an acquittal" and not that it will be an acquittal or that an acquittal ensues. Subsection (6) of section 345 of the Code provides:

"(6) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded."

4. In my opinion "the effect of an acquittal" is different from an acquittal. The guilt of an accused, that is ascertaining whether the accused has committed the offence for which he is charged, is determined by the Trial Court. Once the guilt of the accused has been determined the judgment is delivered by the Court. The judgment has two components, conviction, which means he is guilty, and the sentence, which is the punishment awarded to him. If the legal heirs of the deceased compound the offence it does not mean that the person who was convicted for murder was not

guilty of it, which would be the case if, as a consequence of allowing the composition, he is "acquitted". Subsection (6) of section 345 also avoids creating such a fiction as it provides that the "*composition of an offence ... shall have the effect of an acquittal*", which means that the punishment (sentence) part of the judgment is brought to an end; neither this subsection states, nor it could, that the convict is "acquitted of the charge". The verdict of guilt (the conviction part of the judgment) that the Trial Court had recorded could only have been undone by the High Court, failing which by this Court; it cannot be undone by the legal heirs of the murdered persons.

5. The law permits the legal heirs of a murdered person to compound the offence with the convict, with or without receiving *badal-i-sulh/diyat* (sections 310 and 323 PPC). If the legal heirs compound the offence they elect not to seek retribution or the enforcement of the sentence. The very premise of compounding the offence is the acknowledgment of guilt by the accused who is then forgiven by the legal heirs; the affidavits filed by the legal heirs clearly also state that they have forgiven the petitioners. In the application too the petitioners simply seek their release, and not their acquittal.

6. Section 338-F of the PPC stipulates that in the interpretation and application of Chapter XVI ("Offences Affecting the Human Body") "*and in respect of matters ancillary or akin thereto, the Court shall be guided by the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah*". The aforesaid interpretation of subsection (6) of section 345 is in conformity with a number of verses of the Holy Qur'an: *surah Al-Baqarah* (2) verses 178-9, *surah Al-Maidah* (5)

verse 45, *surah Al-Isra* (17) verse 33 and *surah Ash-Shura* (42) verse 40. In these verses Almighty Allah our Merciful Creator suggests that forgiveness and reconciliation is preferable to revenge or retaliation. A person can only be forgiven if he is guilty. The cited verses neither state nor imply that the finding of guilt, which is recorded by a court of law, is effaced.

7. Some may question the significance of this entire discussion, and enquire, if a court has accepted the application under section 345 of the Code and the convict has been released from jail what difference would his acquittal make. There are grave repercussions. A man who has committed murder but is "acquitted" merely because the legal heirs of the murdered person compound the offence, would enable the murderer, for instance, to honestly declare on a job application that he is not and has never been a convict; he could thus be eligible to apply for government employment, be employed as a teacher, be inducted into the Armed Forces, enter the judicial service or even be appointed as a judge of the superior courts. There is then the religious aspect to the discussion. The person who has committed the sin of murder if he professes his guilt or is convicted in this world, and serves out his sentence or is released as a consequence of the legal heirs forgiving him, may be spared the agony of punishment in the Hereafter.

8. Therefore, I agree with the conclusion reached by my learned brother that leave be granted and the application under section 345 of the Code for compounding the offences be accepted and the petitioners/convicts be released from jail forthwith, unless required in any other criminal case. Consequently, the appeal be allowed to such extent. However, I do not agree that upon

acceptance of the application it follows that they be “acquitted of the charge” or that this outcome is mandated by section 345 of the Code. Convicted murderers can only be acquitted by a court of competent jurisdiction and after application of mind by judges. Acquittal can not be secured, or granted for that matter, whilst accepting an application under section 345 of the Code.

Criminal Petition No. 1616-L of 2016: This petition was filed by the complainant seeking enhancement of the sentences of the convicts from imprisonment for life to death. However, since the heirs of the deceased have entered into the aforesaid compromise, which has been accepted by this Court, the petition is dismissed.

Criminal Miscellaneous Application No. 508 of 2017: This application has sought the suspension of the sentences awarded to the petitioners/convicts, however, in view of the aforesaid compromise, which has been accepted by this Court, the application has become infructuous and is accordingly dismissed.

Judge

(Farrukh)

Approved for Reporting