

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.
(Judicial Department)

Cr.A. No. 143-B/2024.

Taj Muhammad.

Vs:

The State etc.

JUDGMENT

Date of hearing	11.11.2025.
For appellant:	Mr. Muhammad Rashid Khan Dirmakhel, advocate.
For the State:	Mr. Najibullah Khan Marwat Asstt: A.G.
For Respondent:	Nemo.

ABDUL FAYAZ, J.-

1. At a trial held by the learned Sessions Judge, District North Waziristan at Bannu, appellant Taj Muhammad s/o Sher Muhammad r/o Tabi Tolkhel, District North Waziristan, was convicted by the learned ibid court in a case u/s 311 P.P.C for committing the murder of deceased Muhammad Noor on the pretext of honour suspecting illicit liaison between the deceased and his wife and also committed the murder of his wife and sentenced to undergo rigorous imprisonment for life, with extension of benefit u/s 382-B Cr.P.C to the appellant/convict.

2. Briefly stated, the facts of the case are that the complainant, Noor Akbar son of Akbar Khan, while accompanying the dead body of his nephew, reported the incident to the police on 13.10.2022 at about 10:55 a.m. in the Emergency Room of District Headquarters Hospital, Miran Shah. He narrated that his nephew, Muhammad Noor, was taking tea near Speen Ghar Hotel, Miran Shah Bazaar, when he suddenly heard the sound of gunfire and witnessed an unknown person, armed with a pistol, fleeing from the scene. Upon reaching the spot, he found his nephew Muhammad Noor lying dead. The complainant, along with others present there, shifted the dead body to the D.H.Q. Hospital, Miran Shah, for post-mortem examination. He further stated that he had no enmity with anyone, therefore, nominated an unknown assailant as the perpetrator of the crime. The statement of the complainant was reduced into *murasila*, which subsequently formed the basis for registration of the F.I.R No.78 dated 13.10.2022 u/ss 302/311 P.P.C, Police Station, Miran Shah, District North Waziristan.

3. It is noteworthy that during the course of investigation, the appellant/accused, who was already confined in judicial lockup in connection with case F.I.R. No.10 of the same date registered at Police Station Ghulam Khan, was formally

arrested in the present case, wherein Section 311, P.P.C. was subsequently incorporated.

4. After the arrest of appellant/accused on 02.11.2022, challan was submitted to the court and on the conclusion of the trial, the appellant was convicted and sentenced as mentioned above vide impugned judgment dated 04.07.2024. The appellant assailed his conviction and sentence through the instant criminal appeal.

5. In the instant case, the prosecution examined as many as eight witnesses, excluding the complainant Noor Akbar. Thereafter, on 21.05.2024, the learned Deputy Public Prosecutor closed the prosecution evidence. The accused was subsequently examined under Section 342, Cr.P.C., wherein he neither opted to appear as his own witness on oath under Section 340(2), Cr.P.C., nor chose to lead any evidence in defence. Upon completion of the trial, the learned Trial Court pronounced the impugned judgment on 04.07.2024.

6. Although the learned Trial Court appears to have exercised its judicial mind to the facts and circumstances of the case, yet it is incumbent upon this Court to examine whether such approach was in accordance with law; whether the learned trial judge duly appreciated the evidence on record and the

depositions of witnesses; and whether the impugned judgment rests upon a sound evidentiary foundation. The prosecution case primarily hinges upon the statement of the complainant, who, however, was not produced and was ultimately abandoned by the prosecution. While conviction on the basis of the testimony of police officials is not impermissible in law, it nonetheless requires careful scrutiny and a high degree of caution. It is a settled proposition that the administration of justice depends not upon the number of witnesses, but upon the credibility and truthfulness of their statements. In this backdrop, it becomes imperative to determine whether the prosecution has been able to prove its case against the appellant under Section 311, P.P.C, beyond reasonable doubt. To obviate the possibility of miscarriage of justice, this Court deems it essential to undertake a meticulous reappraisal of the entire evidence available on record.

7. Admittedly, in the present case, the appellant was not nominated in the initial report lodged by the complainant, who had charged an unknown assailant for the murder of his deceased nephew. Subsequently, the parents of the deceased, being his sole legal heirs, submitted affidavits and compromise proformas, pursuant to which the statements of Muhammad

Akbar (father of the deceased), Mst. Aaj Bibi (mother of the deceased), and the joint statement of Tajdar Ali Khan and Anbar Ullah Khan (elders/mediators) were duly recorded on 12.07.2023. In their respective statements, they categorically affirmed the factum of a genuine compromise effected between the appellant and the legal heirs of the deceased Muhammad Noor, as a consequence whereof the parents of the deceased waived their right of *Qisas* and *Diyat* and raised no objection to the acquittal of the appellant.

8. It further transpires from the record that after his arrest on 02.11.2022, the appellant made a confessional statement under Sections 164 and 364, Cr.P.C. before the learned Judicial Magistrate concerned, which was duly recorded on the following day, i.e., 03.11.2022. In the said confessional statement, the appellant not only admitted his involvement in the murder of the deceased in the present case, but also confessed to have committed the murder of his own wife in another case bearing F.I.R. No.10 dated 13.10.2022, registered under Sections 302 / 311, P.P.C., at Police Station Ghulam Khan.

9. In the present case, although the learned Trial Court, as discussed hereinabove, acquitted the appellant of the charge

under Section 302, P.P.C., for committing *qatl-e-amd* of the deceased Muhammad Noor on the basis of a lawful compromise arrived at between the parties, yet it proceeded to convict him under Section 311, P.P.C. The conviction was founded on the reasoning that the appellant had committed the murder of Muhammad Noor on the pretext of honour, suspecting illicit relations between the deceased and his wife. It was further observed that subsequent to the murder of Muhammad Noor, the appellant also allegedly murdered his own wife. On such premise, the learned Trial Court held the appellant guilty under Section 311, P.P.C, and sentenced him to imprisonment for life.

10. In the present case, the statements of the deceased's parents, acknowledging a lawful compromise, have substantially diminished the evidentiary value of the confessional statement recorded by the appellant under Sections 164 and 364, Cr.P.C., which therefore cannot be safely pressed into service against him. The record further reveals that, apart from a mere oral assertion branding the occurrence as an incident of so-called honour killing, the prosecution failed to adduce any independent, tangible, or corroborative evidence to substantiate such an allegation. Upon careful scrutiny of the

entire evidence and material available on record, we find no credible evidence supporting the prosecution's claim of honour killing. Therefore, a mere oral assertion, in the absence of any supporting or corroborative evidence on record, cannot form a valid basis for sustaining a conviction under Section 311, P.P.C, on the ground of so-called honour killing.

11. Upon a careful examination of the record, evidence, and relevant law, this Court observes that the prosecution has manifestly failed to establish the guilt of the appellant under Section 311, P.P.C, beyond reasonable doubt. It is an undisputed fact that the appellant was not named in the initial report, wherein the complainant had attributed the murder of his nephew, Muhammad Noor, to an unknown assailant. The subsequent statements of the deceased's parents, being his sole legal heirs, unequivocally affirm the factum of a lawful compromise with the appellant, whereby they expressly waived their right of *Qisas* and *Diyat* and raised no objection to his acquittal. Relying on the case "***Iqrar Hussain and others v. the State and another***" [2014 SCMR 1155], the relevant part of the judgment is:-

" We have considered with a degree of care and caution, the case from all legal and factual aspects and we see no reason, much less plausible, to maintain the conviction of the

appellants, as genuine compromise was effected between the parties because offence under section 302, P.P.C. has been made compoundable in view of the provisions of section 345, Cr.P.C. Thus, in our view, the learned High Court has committed a legal error in convicting and sentencing the appellants for crime under section 311, P.P.C., which, in our view, has caused serious miscarriage of justice.

12. *Accordingly, for what has been discussed and held above, this appeal is allowed and on the basis of compromise, the appellants are acquitted of all the charges levelled against them. They be set free forthwith, if not required in any other case."*

12. Reliance in this regard is placed on "**Ghulam Nabi v. The State and another**" [2020 YLR 1069], the relevant portion of the judgment is:-

" 7. *In view of the above, I am satisfied that the compromise effected between the parties is voluntary, genuine, without duress, threat or coercion. Therefore, in the interest of justice with a view to promote peace and harmony between the families concerned as well as in the society, permission to compound the offence of Qatl-i-amd of deceased namely Iram Shahzadi, and the offence of attempting to commit Qatl-i-amd of Mst. Fazeelat Bibi, the injured witness, is granted.*

8. *There are no circumstances attracting provisions of section 311, P.P.C. as all the families have decided to live peacefully after forgetting unfortunate incident."*

13. Similarly, in the case "**Samreen and another v. The state**" [2015 P.Cr.L.J 753], it was held by his lordship of the Gilgit Baltistan Chief Court:-

" 7. *I have also gone through the impugned*

order so as to check the grounds on which basis the learned trial Court has declined the application under section 265-K, Cr.P.C., was the provisions laid under section 311, P.P.C. For facility of reference section 311, P.P.C. is reproduced below:--

"Notwithstanding anything contained in section 309 or section 310, P.P.C. where all the Walis do not waive or compound the right of Qisas and keeping in view the principle of Fisad-fil Arz the Court may, in its discretion having regard to the facts and circumstances of the case, punish an offender against whom the right of Qisas has been waived or compounded with imprisonment of either description for a term which may extend to 14 years as Tazir.

Explanation:---For the purpose of this expression "Fisad-fil Arz" shall include the past conduct, habitual or professional criminal and the brutal manner in which the offence is committed."

The mechanism provided under section 311, P.P.C. manifestly suggests that even after waiver by the L.Rs. of the deceased the Court still is empowered to convict the accused if all the Walis have not waived the right of Qisas or the accused comes within the ambit of term "Fisad-Fil Arz". In the explanation of the section "Fisad-Fil Arz" has been defined to include the past conduct of the offender as being previous convict, habitual or professional criminal and the brutal manner in which the offence is committed.

8. *Idea of the law givers in enacting section 311, P.P.C. is to inflict punishment on those who, notwithstanding the composition or waiver by wali have to be visited with some penalty, not only for their propensity towards criminal acts but its mode of barbaric execution. The inclusion of the term "Fisad-Fil Arz" has significant meaning and it is only those persons who fall within its ambit who can be convicted and sentenced under this section. It will be very relevant to mention that while taking into consideration the object of enacting section 311, P.P.C., the Courts must also to keep in consideration the provisions of sections 309 and 310, P.P.C., otherwise these sections would become redundant and superfluous in its*

application. Whether the in hand offence allegedly committed by the petitioners was constituting something "Fisad-Fil Arz", nothing has also been written by the I.O. in this regard in the challan of the case. The record is further silent about the petitioners if they were previously convicted or their being habitual and professional criminals.

9. For the reasons what have been discussed above, this petition is accepted consequently, the petitioners/accused are acquitted of the charges vide FIR No. 4/2011 of Police Station Dodishal, District Diamer. "

14. The confessional statement of the appellant recorded under Sections 164 / 364, Cr.P.C, though admissible in evidence, cannot, in the peculiar circumstances of the present case, be treated as conclusive or trustworthy so as to sustain a conviction under Section 311, P.P.C. Once a bona-fide and voluntary compromise between the appellant and the legal heirs of the deceased has been duly verified and judicially acknowledged, the evidentiary weight of the confession stands considerably weakened. It is well-settled through authoritative pronouncements, including *Iqrar Hussain and others v. The State* (2014 SCMR 1155), that where a genuine compromise has been effected, conviction under Section 311, P.P.C, cannot be maintained unless the ingredients of *Fisad-fil-Arz* are convincingly established. Likewise, in *Ghulam Nabi v. The State* (2020 YLR 1069) and *Samreen v. The State* (2015 P.Cr.L.J 753), it was held that mere waiver of *Qisas* does not

automatically attract punishment under Section 311, P.P.C, unless the act is obviously brutal, habitual, or disruptive of public order. In the instant case, the prosecution failed to bring any independent, tangible, or corroborative evidence to substantiate the allegation of honour killing or to show that the offence constituted *Fisad-fil-Arz*. Reliance solely on the confession and on the uncorroborated police testimony is legally insufficient. Accordingly, the prosecution has failed to establish the charge under Section 311, P.P.C, against the appellant beyond reasonable doubt.

15. Even otherwise the accused has been shown in both the cases vide F.I.R No.10 and 78 respectively of Police Stations Ghulam Khan and Miran Shah on one and the same day as arrested, i.e, 17.02.2022. On the subsequent day in F.I.R No.10, on 18.10.2022 he was produced before the Judicial Magistrate where he recorded his statement u/s 164/364 Cr.P.C and then he was sent to the judicial lockup and it was thus on 01.11.2022 when the investigating officer of the case F.I.R No.78 submitted an application before the Judicial Magistrate Miran Shah for issuance of *Zameema-Bay* to investigation and interrogate the present appellant in the instant case F.I.R No.78 dated 13.10.2022 in Police Station Miran Shah, so he was

brought out the appellant from Jail on 02.11.2022 and request was made to the Judicial Magistrate on the same day for police custody whereby the learned Judicial Magistrate granted one day physical custody and on 03.11.2022 he was produced before the same Judicial Magistrate for recording his confessional statement, where the appellant recorded the same. This confessional statement cannot be considered a voluntary confessional statement for the reason when the appellant was arrested in both the cases referred to above then why he was sent to the judicial lockup on 18.10.2022 without recording the confessional statement in case F.I.R No.78, i.e, the instant case, thus, the confessional statement loses its evidentiary value, especially when the same is retracted and without any corroboration, therefore, the same cannot be relied upon to be true and voluntary.

16. In view of the foregoing analysis and in light of the settled principles in the above cited case laws, it is abundantly clear that the learned Trial Court fell in error by invoking the provisions of Section 311, P.P.C, without there being any credible evidence of *Fisad-fil-Arz* or proof that the act in question was committed in a brutal or socially disruptive manner. The record reflects that the prosecution has utterly

failed to prove the requisite elements of the offence beyond reasonable doubt, while the lawful and voluntary compromise effected between the parties further extinguishes the element of mens rea necessary for sustaining the conviction. Consequently, the impugned judgment dated 04.07.2024, passed by the learned Sessions Judge, District North Waziristan at Bannu, suffers from material legal infirmities and mis-appreciation of evidence, warranting interference by this Court. Resultantly, the instant criminal appeal is allowed; the conviction and sentence of the appellant Taj Muhammad under Section 311, P.P.C, is set aside; and he is acquitted of the charge. The appellant, being in custody, shall be released forthwith, unless required in any other case.

Announced
Dt:11.11.2025

***Imranullah*PS**

-Sd-
Judge

-Sd-
Judge

(D.B) Hon'ble Mr. Justice Muhammad Tariq Afridi & Hon'ble Mr. Justice Abdul Fayaz.

24/11
SCANNED
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Khan Khan