

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

Cr.A No. 55-M/2014

- 1) Noor Rehman s/o Gul Zaman.
- 2) Dilawar s/o Sharif Khan residents of Tehsil Daggar, District Buner.

Qversus

- 1) The State through Additional Advocate General, Darul Qaza, Swat.
- 2) Hazrat Rahman s/o Sharif Khan r/o Anghapur, Tehsil Daggar, District Buner.

Present:

Mr. Farman Ali Khan, Advocate for the
appellants/convicts.

Mr. Razauddin, A.A.G. for State.

Date of hearing: **24.09.2020**

JUDGMENT

ISHTIAQ IBRAHIM, J.- The present appellants/convicts and their acquitted co-accused Muhib Gul, Bahr-ul-Islam and Hameed Hassan were charged u/s 302, 322, 34 P.P.C, 13 A.O vide case F.I.R No. 359 dated 16.07.2011 of P.S Daggar, District Buner, for committing murder of Mst. Bakhtia. After their regular trial before the learned Sessions Judge-II/ Izafi Zilla Qazi, Buner, the present appellants were found guilty of the charge vide judgment dated 29.01.2014, hence, they were convicted u/s 302 (b) P.P.C and sentenced to undergo life imprisonment with compensation of Rs.200,000/- each payable to legal heirs of the deceased u/s 544-A, Cr.P.C, or in

default thereof to undergo further six months S.I. each. Appellant Dilawar was further convicted u/s 13 A.O and sentenced to one year R.I with fine of Rs.2000/- or to suffer further seven days S.I. in case of non-payment of fine whereas their co-accused were acquitted of the charge.

2. Abstract of the prosecution case is that on receiving information regarding murder in village *Anghapur*, Muhammad Irshad Khan SHO (PW-6) rushed to the house of appellant Noor Rehman and found the dead body of a lady aged 24/25 years who was slaughtered and lying in pool of blood. Complainant Hazrat Rehman (PW-5), who was present with the dead body, reported to S.H.O that deceased Mst. Bakhtia was his sister who was married to Abdur Rehman son of Gul Zaman some seven years ago and the wedlock had resulted into birth of two children. Husband of the deceased was staying in Malaysia for earning livelihood whereas the deceased and her children were residing in the same house with her brother-in-law Noor Rehman, one of the appellants/convicts. On the same day, ladies of the house of appellant Noor Rehman came to his house complainant and informed him that they have been ousted by the present appellants from the

house whereas the deceased had remained alone there, thus, they apprehended threat to her life. The complainant alongwith his uncle Zareef went to the house of deceased where they found her slaughtered body on a cot whereas the appellants had decamped from the spot. While disclosing the motive, the complainant stated that both the appellants were suspecting the deceased to be of immoral character.

3. Report of the complainant was reduced into *Murasila* (Ex.PA/1) which was later converted into formal F.I.R (Ex.PA). The appellants were arrested on 28.07.2011. The matter was initially investigated by Balezar Khan S.I (PW-8) who visited the spot of occurrence, prepared site plan and took into possession blood from the spot and blood-stained garments of the deceased. On his transfer, the task of remaining investigation was assigned to Sher Muhammad Khan S.I (PW-7) who recovered the crime weapons i.e a blood-stained dagger and 30 bore pistol on pointation of the appellants. He also produced the appellants before concerned Magistrate who recorded their confessional statements. During the course of investigation it also came to light that co-accused Muhib Gul, being involved in illicit relations with the deceased, had prepared her nude

video and published it through the other co-accused Bahr-ul-Islam and Hamid Hassan. Thus, section 322 P.P.C was added in the F.I.R and the above named co-accused were accordingly charged in the case. It is noteworthy that on the same allegation, another case vide F.I.R No. 369 dated 19.07.2011 u/s 354-A/249/34 P.P.C was also registered against the aforesaid acquitted co-accused at P.S Daggar.

4. After completion of investigation, challan was put in Court and all the accused including the present appellants were formally indicted for the offence to which they did not plead guilty and opted to face the trial. Prosecution produced ten witnesses in support of its case and closed evidence. When examined u/s 342, Cr.P.C, the accused once again denied the allegation of prosecution, however, they neither produced any witness in their defence nor opted to be examined on oath in terms of section 340(2), Cr.P.C. On conclusion of trial, the learned trial Court through the impugned judgment acquitted the co-accused whereas convicted the present appellants as discussed above, hence, this appeal.


5. We have heard the arguments of learned counsel for the appellants as well as learned A.A.G. for State and perused the record with their able assistance.

6. It is matter of record that legal heirs of the deceased have effected compromise with the present appellants at trial stage. When the case came up for hearing before this Court on 27.02.2018, learned counsel for the appellants drew the attention of this Court towards the compromise between the parties. It was also noticed by this Court that the appellants were behind the bars in the present case since 2011 and ultimately they were convicted by trial Court on 29.01.2014 against which the present appellants preferred appeal on 24.02.2014, however, the appeal could not be decided despite lapse of four years. Thus, this Court vide order dated 27.02.2018 suspended the conviction and sentence of the appellants and directed them to be released on bail.

7. During the course of arguments on 03.09.2019, it surfaced from the record that the murder in the present case, having been allegedly committed on the pretext of honor, is non-compoundable in terms of section 345, Cr.P.C,

however, the aforesaid bar was introduced through Criminal Law (Amendment) (Offences in the Name of or on Pretext of Honor) Act, 2016 and later on extended to PATA. Thus, the main question which arose at that juncture was that as to whether the said Act can be applied to the present case which was committed prior to the enforcement of the Act. For resolution of the said controversy, M/S Aurngzeb, Sabir Shah, Masood-ur-Rehman, Barrister Asad-ur-Rehman, Jehanzeb Buner and Aziz Ahmad Hashmi Advocates were appointed as *amicus curie* who assisted this Court regarding the applicability and retrospective effect of section 311 P.P.C read with section 345, Cr.P.C. Thereafter, record of the case was sent to trial Court for confirmation of compromise with directions to submit a detailed report before this Court which has already been received.


8. Admittedly, the clog on compromise in honor killing cases was introduced through Criminal Law (Amendment) (Offences in the Name or on pretext of Honor) Act, 2016. Prior to that the offence of honor killing was compoundable though of course with permission of Court, however, thereafter the *ibid* Amendment Act, 2016 was brought restricting



compromise in honor killing cases. The moot questions before this Court are whether the said Act would have retrospective effect on the present case and what would be the relevant date of composition of the offence in question. The relevant date of composition of offence, in our view, would be the date on which the occurrence took place. In the present case the occurrence of alleged honor killing took place in 2011 and by that time the said offence was compoundable albeit with permission of Court, therefore, the bar of compromise introduced through the Amendment Act, 2016 cannot be made retrospectively applicable to this case. Reliance is placed on Muhammad Arif and another Vs. The State and another (1993 SCMR 1589). The august Supreme Court of Pakistan, after making elaborate discussion on the issue with special reference to Article 264 of the Constitution read with section 6 of the West Pakistan General Clauses Act, 1956, observed that:

From the above cited cases, it is evident that there is judicial consensus that where a law is repealed, it will not inter alia affect any investigations, legal proceedings or remedy in respect of any right, privilege, obligation,

liability, penalty, forfeiture or punishment, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the law had not been repealed. This is so, inter alia, because of section 6 of the General Clauses Act, 1897 (which corresponds to section 4 of the West Pakistan General Clauses Act, 1956), in the absence of any contrary intention manifested in the relevant statute.



Certainly, the bar to compound the offence so introduced in the Amendment Act, 2016 would take away certain rights of the present appellants available to them under the existing law. The established rule in such eventuality is that every statute which takes away or impairs vested rights enjoyed by a person under the existing law must be presumed to be intended not to have retrospective effect. Although the said rule is not applicable in matters of procedure, however, if a statute deals together with rights and procedure at the same time then the Courts must prefer the construction to protect the existing rights under the old procedure. Reliance is placed on "Asif Ali Zardari Vs. The State" (1993 PCr.LJ 781 Karachi) wherein it was held that:

The consensus, therefore, appears to be that unless such an intention has been expressed in a statute or the same can be clearly gathered by necessary intendment, no statute

is to be construed so as to operate retrospectively and take away vested or substantive rights. There being a presumption that the legislature could not have intended to enact what is unjust, a statute cannot be given retrospective operation so as to impair existing rights, whether they be contractual or vested rights, or those acquired under a statute. The same presumption would apply in case of statutes creating a new obligation or a new disability or imposing a new duty. However, since no person has a vested right in the course of procedure, any alteration in the procedure must operate retrospectively, unless a different intention can clearly be spelt out from the statute itself. Where the rights and procedure are dealt with together by a statute such construction must be preferred whereby existing rights are dealt with in accordance with the old procedure and new rights are dealt with by the new procedure. The same rule should equally apply to rights which have purely accrued under a statute. However, as was held in Adnan Afzal's case, if in the process of change of law any existing rights are affected or the giving of retroactive operation causes inconvenience or injustice, then the Courts will not even in the case of procedural statute, favour an interpretation giving retrospective effect to the statute.

Thus, keeping in view the facts and attending circumstances of the case, we deem it fair and just to grant permission to compound the offence and accept the compromise so effected by the parties in the present case.

9. The learned trial Court has sent the file of compromise proceedings to this Court according to which the deceased is survived by her father

Sharif Khan, mother Mst. Sahib Rana (died afterwards), husband Abdur Rehman and two minor children namely Azman (son) and Mst. Sahiba (daughter). After death of Mst. Sahib Rana, her three sons namely Afsar Khan, Hazrat Rehman and Aziz-ur-Rehman and one daughter Mst. Asma also descended the deceased as her legal heirs. Learned trial Court has recorded joint statement of major legal heirs of the deceased namely Sharif Khan (father), Afsar Khan, Hazrat Rehman, Aziz-ur-Rehman (brothers) and Mst. Asma (sister) wherein they have exhibited the compromise deed on prescribed proforma as Ex.PA with affidavits as Ex.PA1 to Ex.PA5 and CNICs as Ex.PB1 to Ex.PB5. They have pardoned the present appellants/convicts by waiving their right of *Diyat*. Statement of husband of the deceased was recorded by learned trial Court through video link after confirming his identity through Mr. Shah Hassan Khan Advocate, Mushtaq Khan son of Karimullah and Hamid Khan s/o Saifur Rehman in the open Court and to this effect their joint statement was also recorded. Similarly, the trial Court has also recorded statement of Jehangir Khan Junior Clerk/Incharge IT Cell of the District Courts Buner besides joint statement of

the local elders namely Ghani Bahadar and Umar Rehman was recorded who have verified the genuineness of the compromise. Joint share of both the minor legal heirs namely Azman and Mst. Sahiba amounting Rs.1,003,500/- (Rs.669,000/- for the male child and Rs.334,500/- for the female child) deposited by the present appellants to the trial Court has been invested in profitable account /scheme through Accountant of the Court of learned Sessions Judge, Buner.

10. Report of the learned trial Court shows that major legal heirs of the deceased have effected a genuine compromise with the present appellants without any pressure whereas interests of the minor legal heirs have been protected through deposit of their share in *Diyat* amount in profitable account. Resultantly, this appeal is accepted on the basis of compromise, the impugned judgment is set aside and appellants Noor Rehman and Dilawar are acquitted of the charge in case F.I.R No. 359 dated 16.07.2011 to the extent of offences u/s 302/322/34 P.P.C. registered at P.S Daggar District Buner. Conviction of appellant Dilawar u/s 13 A.O is maintained, however, the sentence awarded to him under the said offence is reduced to already undergone. The

appellants are on bail, therefore, their sureties are
absolved from liability of bail bonds.

Announced.

Dt: 24.09.2020

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