

P L D 2018 Balochistan 11

Before Nazeer Ahmed Langove and Jamal Khan Mandokhail, JJ

INNAYATULLAH---Appellant

Versus

THE STATE---Respondent

Criminal Appeal No.287 of 2014 and Criminal Acquittal Appeal No.119 of 2016, decided on 20th July, 2017.

Criminal Procedure Code (V of 1898)---

---S. 345---Penal Code (XLV of 1860), Ss. 302, 324, 311 & 34---Compromise---Qatl-i-amd, attempt to commit qatl-i-amd, tazir after waiver or compounding of right to qisas in qatl-i-amd---Invalid compromise---Effect---Prosecution case was that accused party assaulted on complainant party as a result of which two persons of complainant party died on the spot and three sustained injuries---Matter was compromised between the parties during trial---Legal heirs of the deceased and injured appeared before the Trial Court and verified the factum of compromise arrived at between the parties---Accused was acquitted of the charge under Ss.302, 324 & 34, P.P.C., in pursuance of the compromise, however, convicted under S.311, P.P.C. for the reasons that offence was fasad fil Arz---Accused filed appeal for setting aside the conviction and sentence under S.311, P.P.C.---Complainant also moved appeal and contended that compromise was the outcome of duress, coercion and pressure as such, the same could not be termed as "compromise" falling within the purview of S.345(2), Cr.P.C.---Validity---Record showed that accused was hardened, dangerous criminal and member of a gang, who had committed heinous crimes and made hostage the entire area---In the present case, legal heirs of the deceased had come forward with the claim that the compromise deed filed in the Trial Court was the result of pressure, coercion and continuous threats---Accused was a habitual offender, no one dared to come forward against him and his family and the compromise in question was the result of pressure, coercion and continuous life threats to the complainant and his family including children and women folk---High Court observed that present case in such a situation, could not be taken lightly and had to be resolved as per law---Every effort was to be made to discover that compromise was genuine when possibilities of coercion or pressure by powerful persons to agree to compromise existed---Such important aspect of the matter had escaped notice of the Trial Court---Trial Court was to observe the conduct and demeanor of the accused, particularly in the case of compromise---Circumstances established that trial court failed to observe and notice the authenticity of the compromise, which caused mis-carriage of justice---Appeal filed by the accused was dismissed and that of the complainant was accepted by setting aside the impugned judgment case was remanded with the direction to Trial Court to decide the same afresh on merits after affording fair opportunity of leading evidence to the parties,

1997 SCMR 1526 rel.

Muhammad Aslam Chishti and Zahoor Ahmed Baloch for Appellant.

Qazi Mushtaq, A.P.G. for the Respondents.

Date of hearing: 11th May, 2017.

JUDGMENT

NAZEER AHMED LANGOVE, J.-- By this judgment, we intend to dispose of Criminal Appeal No. 287 of 2014 and Criminal Acquittal Appeal No. 119 of 2016, (arising out of same judgment). Out of them, Criminal Appeal No. 287 of 2014, is directed against the judgment dated 28th October, 2014, (hereinafter referred as "impugned judgment"), passed by Sessions Judge, Kharan, (hereinafter referred as "the trial Court"), whereby the accused namely Inayatullah S/o Muhammad Ishaq has been convicted under Section 311, P.P.C. and sentenced thereunder for a period of fourteen (14) years' R.I. as tazir, besides, payment of Diyat amount, to the minor legal heirs of the deceased, in case of non-payment of Diyat amount, to keep him in Jail, and dealt with, as a prisoner of SI, till realization, as provided under Section 337-Y(2), P.P.C.. Whereas, Criminal Acquittal Appeal No. 119 of 2016 has been filed by Master Raza Muhammad, (the father of deceased Hidayatullah), against the acquittal of respondent, namely Inayatullah under Section 302/324/34, P.P.C.

2. Brief facts of the case are that in pursuance of report, submitted on 4th January, 2013, the instant FIR having No. 02/2013, was registered at Police Station Kharan, wherein he alleged that on fateful day of incident, he along with Hidaytullah, Baran, his brother Babar Zaman and women folk, were present in the house of Baran, the accused persons Inayatullah, Muhammad Raheem and Amjad Ali, equipped with pistols, entered into the house forcibly, out of them, the accused Inayatullah, made fires at Hidayatullah, while the accused Muhammad Raheem, fired at Baran and complainant, his brother Babar Zaman, sister in law, Mst. Bibi Sadiqa (wife of Babar Zaman) and Bibi Ruqaya, came out of room and fired by the accused Amjad Ali, firing made by the culprits, resulted the death of Hidayatullah and Baran on the spot, while complainant suffered injuries on his left eye, whereas, Bibi Ruqaya, Bibi Sadiqa and Babar Zaman suffered injuries on left ankle, right leg and finger of left leg respectively. Motive behind the incident was that Mst. Bibi Sadiqa was married to complainant's brother Babar, Zaman, and father of Bibi Sadiqa, was reluctant to get the above named lady married with the brother of the complainant, wanted to give her hand to co-accused Amjad Ali. Hence this incident and registration of the FIR. During course of investigation, police laid hands on culprits and arrested the accused Amjad Ali, who after facing trial was acquitted of the charge on 26th September, 2013, while the accused Inayatullah (appellant) remained fugitive of law, finally arrested by the police, on completion of investigation, challan of the case was submitted and trial commenced. In the meantime, legal heirs of deceased Baran and Hidayatullah along with injured Maqbool Hussain, Babar Zaman, Bibi Sadiqa and Bibi Ruqaya, appeared before the trial Court, filed an application under Section 345(2) Cr.P.C, for acceptance of compromise, arrived at between the parties.

3. As a result of aforesaid compromise, though the accused was acquitted of the charge, for offence committed under Section 302/324 P.P.C., however, convicted and sentenced under Section 311, P.P.C., for a period of 14 years' RI as tazir, for the reasons that the alleged crime

committed by the appellant, fell within the definition of fasad fil ard. Hence this appeal.

4. The learned senior counsel for the appellant argued that, the trial Court erred in law by holding that despite a valid compromise, arrived at between the parties, the accused being involved in a heinous offence of multiple cold blooded murders, is liable to be convicted under Section 311, P.P.C. and sentenced thereunder; that Section 311, P.P.C. applies, when all the walis do not waive or compound the right of Qisas or principle of fasad fil ard is attracted, which includes, past conduct of the offender, subject to principle of Ejusdem generis, relatable to the case of Qatl-i-Amd, or the accused in his credit, had previous convictions, or the offence was brutal or shocking and outrageous to public conscious or the offender is considered a potential danger to the community. The learned senior counsel added that, the aforesaid ingredients sine qua non, for invoking jurisdiction of the Court and conviction under Section 311, P.P.C. and sentence thereunder were not available at all; that liability of the petitioner's brother, if any, wanted in another case, his alleged threats to the police and legal heirs of the deceased could not be burdened on the appellant; that the appellant was not the alleged sole offender in any of the cases, therefore, Section 311, P.P.C. was not invocable, he lastly submitted for setting aside the impugned conviction and sentence and acquittal of the appellant.

5. The learned APG strenuously opposed the appeal by submitting that the judgment impugned passed by the trial Court, is not based on proper appreciation of evidence and relevant provisions of law. Hence is not sustainable under the law, for the reasons that the alleged compromise arrived at between the parties was the result of pressure, threats, coercion and undue influence, he referred the petitions filed by the complaint, wherein he submitted for setting aside the judgment dated 28th October, 2014, whereby the appellant was acquitted of the charge under Section 302/34, P.P.C. and convicted under Section 311, P.P.C. and sentenced thereunder for a period of fourteen (14) years with the further submissions for trial of the case on merits.

6. We have heard the learned counsel for the parties, and gone through the record with their assistance. It appears that the instant case was registered with the history of a heinous offence of murder and blood bath of innocent citizens, who were present in their house, resorted to firing after trespassing the house, which resulted the instantaneous death of Hidayatullah and Baran on the spot and injuries to others. Careful perusal of entire record shows that the appellant is a hardened criminal, remain indulged in various cases of murder by creating terror in the area. During trial, statedly, the matter was compromised between the parties, legal heirs of the deceased persons and injured did appear before the trial Court and verified the factum of compromise, arrived at, between the parties, in pursuance thereto, the accuse/appellant was acquitted of the charge, under Section 302, 324/34, P.P.C, however, convicted under Section 311, P.P.C. and sentenced for a period of 14 years as tazir, vide judgment dated 28th October, 2016, passed by the Sessions Judge Kharan. Hence this appeal. In the meantime, the complainant, Master Raza Muhammad, filed Criminal Appeal No.119 of 2016 with the contention that since it has come on record that the compromise was secured without free consent of the legal heirs of deceased and injured, rather it was the outcome of duress, coercion and pressure, as such, the same cannot be termed as compromise in legal sense, falling within the purview of section 324(2), Cr.P.C; that the accused is a hardened and dangerous criminal and member of a gang, who had committed heinous crimes and made hostage the entire area. Lastly, he prayed for setting aside the impugned judgment dated 28th October, 2016 passed by Sessions

Judge Kharan, whereby the convict/respondent was illegally acquitted of the charge under Section 302, 324/34, P.P.C. and convicted under Section 311, P.P.C. and sentenced thereunder. Though the accused has been acquitted of the charge on the basis of compromise arrived at between the parties, but in our considered perception the instant case is a bad example of high handedness, legal heirs of the deceased, came forward with the claim that the compromise deed filed in the trial Court was the result of pressure, coercion and continuous threats, the learned APG at very outset stated that the appellant is a habitual offender, no one dared to come forward against him and his family and the compromise in question was the result of pressure, coercion and continuous life threats to the complainant and his family including children and women folk, in such juncture of affairs, the matter in hand cannot be taken so lightly, and has to be resolved as per the law.

7. It may not be irrelevant to add here that a compromise must be genuine and voluntary. Where parties compromised voluntarily to put an end to hostility between them and heirs of deceased were fully compensated, it should be allowed, but contrary to that no compromise can be termed as a valid compromise unless and until the same is executed between the parties as their own voluntarily with free consent and without any fear, influence, coercion and deception. Compromise under influence is liable to be rejected. Before a Court considers a compromise between the parties in murder cases, it has to guard against possibilities of coercion or pressure by powerful persons to agree to a compromise and out of caution, make every effort to discover if compromise is genuine, but this important aspect of the matter escaped notice of the trial Court.

8. So far as the gravity of crime committed by the accused is concerned, murder directly involves and affects the society and in case of unjustified murder by a person who on account of his immorality or to satisfy his brutal instinct takes the law in his own hands is responsible for creating sensation and panic in society and the offence so committed is also related to the rights of God (Haqooq Allah). State in such a situation would be fully competent to award punishment as may be deemed fit and proper notwithstanding pardon by the legal heirs of the deceased.

9. So far as the application for compromise is concerned, no doubt mutual compromise brings peace in the society and eradicates possibility of future bloodshed. An offence under section 302, P.P.C. is compoundable in Islam and so has it been made in the reference to sections 309/310/338-E, , P.P.C. read with section 345, Cr.P.C. Divine wisdom was present behind the notion of forgiveness in the Islamic Jurisprudence. Islamic system of life is more liberal than any other religion, the object of which is to promote harmony and brotherhood amongst the members of the society. However, any doubt with regard to the free will of the parties in entertaining into a compromise shall have to be resolved against the acceptance of the compromise; because, it is not a question of the punishment of an accused as a result of the compromise that benefit of doubt may be given to the accused. On the contrary it is an accused convict who seeks the favour of the other party. And if he is unable to satisfy the other party on all questions relating to compromise (which becomes a contract) that it is free from blemish and doubt, it cannot be accepted. Similarly, if the Court has any doubt whatsoever that the compromise is tainted with pressure, coercion, undue influence, blackmail, extortion or similar other infirmities, it shall have to be rejected without much of arguments or discussion. Because only that compromise would qualify for acceptance which is above every blemish, mild or strong. The heirs of the deceased

should come forward to state on solemn affirmation or oath that they had pardoned the culprits, but the learned trial Court, while accepting application for compromise erred in law by holding that the compromise arrived at between the parties is genuine and valid, without application of judicial mind and conscious, which in our view point caused miscarriage of justice, because it is expected that while dealing with such kind of matters, the Courts should, always observe the conduct and demeanor of the accused, particularly in the case of compromise, but this important ingredient sine qua non, for acceptance of the application and compromise thereto remained unattended. In this respect reliance can be placed on 1997 SCMR, page 1526. The trial Court exercised its jurisdiction improperly, and accepted an invalid compromise, which was the outcome of pressure, coercion, threats and undue influence, but the learned trial Court failed, to appreciate this aspect and passed the judgment impugned in haste, on grounds not recognized by law, because departure from a normal principle must be necessitated by obligatory observance of some higher principle, appeal to logic, reasons and acceptable to a man of prudent mind, and for no other reason, coupled with the fact that the trial Court failed to observe and notice the authenticity of the compromise, which in our considered opinion caused mis-carriage of justice, as such, the judgment dated 28th October, 2014, passed by the learned trial Court, whereby the appellant has been acquitted of the charge under Section 302/34, P.P.C., on the basis of, an invalid compromise, obtained with pressure, coercion, and undue influence, and convicted the appellant under Section 311, P.P.C. and sentenced thereunder, for a period of 14 years as Tazir, besides, the amount of Diyat payable to the minor legal heirs of the deceased, being devoid of any merit is liable to be reversed.

As a result, Judgment impugned, dated 28th October, 2014, passed by the Sessions Judge, Kharan is set aside, and the appeal, filed by the appellant, Inayatullah, is dismissed, whereas, the appeal filed by Master Raza Muhammad (the father of deceased Hidayatullah), is accepted and the case is remanded, to the trial Court, with the directions, to proceed with, the matter on merits, after, affording fair opportunity of leading evidence, to the parties, and decision thereon, preferably within three months.

JK/130/Bal.

Case remanded.