

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah

Criminal Appeal No. 137-L of 2010

Muhammad Yousaf

... Appellant

versus

The State, etc.

... Respondents

For the appellant: Nemo.

For respondents No. 2 & 3: Mr. Javed Iqbal Qureshi, ASC
Mian Ghulam Hussain, AOR

For the State: Mr. Mazhar Sher Awan, Additional
Prosecutor-General, Punjab

Date of hearing: 05.06.2018

ORDER

Asif Saeed Khan Khosa, J.: An application has been received from the learned Advocate-on-Record for the appellant seeking an adjournment on account of serious indisposition of the learned counsel for the appellant and the request so received is not opposed by the learned counsel for the respondents.

2. We note that at the time of murder of Muhammad Aslam on 02.02.2005 he was survived by his father namely Waryam, his wife namely Mst. Razia Bibi and his son namely Muhammad Akmal who could inherit from the deceased and were, thus, his *Wali* in

terms of section 305(a), PPC. Respondents No. 2 and 3 were convicted and sentenced by the trial court for the murder of Muhammad Aslam and during the pendency of their appeal they were acquitted of the charge by the High Court on the basis of a compromise arrived at between the said respondents and the surviving and existing *Wali* of the deceased as by that time the father of the deceased who was originally a *Wali* of the deceased had already died and, thus, those inheriting from the father of the deceased were not joined in the compromise. The issue brought before this Court is as to whether for the purpose of a valid compromise in the present case of murder the heirs of the deceased at the time when the deceased was done to death were the persons who could enter into a compromise with the private respondents or when one of such heirs of the deceased had died after Muhammad Aslam deceased's murder could the heirs of such heir of Muhammad Aslam deceased be treated as a necessary part of a compromise to be affected for the benefit of the present private respondents. This issue had initially been dealt with by a Division Bench of the Lahore High Court, Lahore in the case of Ahmad Nawaz alias Gogi v. The State (PLD 2007 Lahore 121) and with express reference to the provisions of section 305(a), PPC it had been held that for the purpose of a compromise a *Wali* is only that person who could inherit from the deceased and not an heir of an heir of the deceased who could not inherit from the deceased at the time of his murder. The said view of the Lahore High Court, Lahore had been taken notice of a 5-member Larger Bench of this Court in the case of Abdul Rashid alias Teddi v. The State and others (2013 SCMR 1281) but such view did not find favour with this Court in that case and we note that while taking a different view of the matter this Court had not referred to the definition of *Wali* contained in section 305(a), PPC at all which definition apparently did not support the view taken by this Court in that case. In this view of the matter we consider that the issue involved in this case requires a fresh look by this Court so as to render an authoritative pronouncement on the subject. Let the office bring the matter to the notice of the Hon'ble Chief Justice who is

requested to consider advisability or otherwise of constitution of a Larger Bench of at least seven Hon'ble Judges of this Court in order to resolve the controversy noted above. Adjourned.

Judge

Judge

Judge

Lahore

05.06.2018

Not approved for reporting.

Arif