

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Crl. Appeal No.63-P/2018

Mukaram Khan son of Akram Khan,
r/o Mughalki, Mohallah Khan Khalil,
District Nowshera.

Appellant (s)

VERSUS

The State etc

Respondent (s)

For Appellant :-	<u>M/S Sohail Akhtar and Mian Arshad Jan,</u> <u>Advocates.</u>
For State :-	<u>Mr. Mujahid Ali Khan, AAG.</u>
For complainant:-	<u>Sohail Khan, in person.</u>
Date of hearing:	<u>03.09.2020.</u>

JUDGMENT

ROOH-UL-AMIN KHAN, J:- At a trial held by learned Additional Sessions Judge, Lahor (Swabi), accused Mukaram Khan, having been found guilty of committing murder of Fojdar and Naqash Gul deceased and an attempt at the lives complainant Sohail Khan and PW Rehman Gul, vide judgment dated 10.01.2018, in case FIR No.342 dated 09.12.2015, under sections 302/324/34 PPC, Police Station Tordher, was convicted and sentenced as under:-

Under section 302 PPC:- To undergo imprisonment for life on two counts and to pay fine of Rs.4,00,000/-, as compensation in terms of section 544-A Cr.P.C.

Under Section 324 PPC:- To undergo three years imprisonment and pay a fine of

Rs.10,000/- or in default therefore to undergo three months S.I.

Both the sentences shall run concurrently and benefit of section 382-B Cr.P.C. has been extended to him.

2. Through the instant appeal, the convict has questioned his conviction and sentences, whereas, complainant has filed connected Cr.R. No.13-P/2018, seeking enhancement of sentence of the convict from life imprisonment to normal penalty of death, as provide for the offence under section 302 PPC.

3. Since, both the matters are emanating from one and the same judgment of the learned trial Court, therefore, we propose to decide the same through this single judgment.

4. The prosecution case as unfolded in First Information Report (FIR) Exh.PA is that on 09.12.2015 at 1730 hours, complainant Sohail Khan (PW.3), in company of dead bodies of Fojdar and Naqash Gul deceased, reported in Police Station Tordher Swabi to the effect that on the fateful day he along with the deceased and PW Rehman Gul was proceeding to their village on two motorbikes. The deceased were riding on one motorcycle, whereas, he and Rehman Gul (PW.4) on another. At 1630 hours, when they reached near the house of one Saz Bacha, the appellant along with absconding co-accused Dil Jan and Dawar Khan, duly armed with firearms overtook their

motorbikes in a red colour motorcar, intercepted them and opened fire at them, as a result, the deceased got hit and died on the spot, whereas, he and PW Rehman Gul luckily remained unscathed. A previous blood feud between the parties has been advanced as a motive behind the occurrence. Report of the complainant was recorded into FIR Exh.PA by Farooq Khan ASI (PW.6), who also prepared injury sheets and inquest reports Exh.PM/1 to Exh.PM/5 of the deceased and sent their dead bodies to the mortuary for post mortem examination.

5. On arrest of the appellant and completion of investigation, *challan* was submitted against him before the learned trial Court, where he was tried and ultimately convicted and sentenced as mentioned above, vide judgment impugned herein.

6. During pendency of the appeal, the appellant-convict died inside the jail. In this view of the matter, the main legal point for consideration before us is whether on the death of the appellant-convict, the appeal shall abate under section 431 Cr.P.C., only to the extent of his corporal punishment i.e. imprisonment for life or also to the extent of compensation under section 544-A Cr.P.C.?

7. We have heard the respective submissions of learned counsel for the parties and gone through the relevant law on the subject.

8. Section 431 Cr.P.C., provides that every appeal under section 411-A sub-section (2), or section 417 shall finally abate on the death of the accused, and every other appeal under this Chapter (**except an appeal from a sentence of fine**) shall finally abate on the death of the appellant. For the sake of convenience and ready reference, section 431 Cr.P.C., is reproduced below:-

“431.Abatement of Appeals:- every appeal under section 411-A sub-section (2), or section 417 shall finally abate on the death of the accused, and every other appeal under this Chapter (**except an appeal from a sentence of fine**) shall finally abate on the death of the appellant”.

9. Chapter-III of Pakistan Penal Code, 1860, provides following ten types of punishments:-

- i. Qisas
- ii. Diyat;
- iii. Arsh;
- iv. Daman;
- v. Ta'zir;
- vi. Death
- vii. Imprisonment for life.
- viii. Imprisonment which is of two descriptions, namely,
(Rigorous i.e. with hard labour); (ii) Simple.
- ix. Forfeiture of property
- x. **Fine.**

10. Similarly, section 302 PPC, provided the following punishment for the offence of Qatl-i-am:-

- (a) Punishment of death as Qisas;
- (b) Punishment of death or imprisonment for life as Ta'zir having regard to the facts and circumstances of the case, if the proof in either of the forms specified in section 304 is not available; or
- (c) Punishment of imprisonment of either description for a term which may extend to twenty-five years, where according to the injunctions of Islam the punishment of qisas is not applicable.

Thorough perusal of section 302 PPC would reveal that it does not include “**compensation**” as a punishment for the offence of Qatl-e-Amd. Similarly, “**compensation**” is also not included in the schedule of punishments provided under section 53 PPC. The word “**compensation**” also does not find mention in section 431 Cr.P.C., rather word “**fine**” has been specifically used therein. Though on conviction of an offender under section 302 PPC, the courts normally, in addition to corporal punishment, imposed compensation upon the offender/convict to be paid to the legal heirs of the deceased in terms of section 544-A Cr.P.C., recoverable as arrears of land revenue, but in terms of section 544-A Cr.P.C., the compensation is not

a sentence under section 302 PPC, as per ratio of the judgment of Hon'ble Supreme Court in case titled, **“Azmat Ullah vs the State” (2014 SCMR 1178)**. The relevant part of the judgment in this regard is reproduced below:-

“Keeping in view the facts and circumstances of the case this appeal is partly allowed, the conviction of the appellant for an offence under section 302(b) PPC is converted into that for an offence under section 302(c) PPC and consequently his sentence is reduced from rigorous imprisonment for twenty-five years to rigorous imprisonment for ten years. **The sentence of fine passed against the appellant by the learned trial court and upheld by the Lahore High Court, Lahore has been found by us to be unwarranted because section 302(b) or 302(c) PPC, do not contemplate any such sentence.** Instead of fine we direct that the appellant shall pay a sum of Rs.50,000/- to the legal heirs of the deceased by way of compensation under section 544-A Cr.P.C. or in default of payment therefore he shall undergo simple imprisonment for six months. The benefit under section 382-B Cr.P.C. shall be extended to him. This appeal is disposed of in these terms.”
(Bold and underlines are ours which implied emphasis).

11. In view of the judgment (*supra*) of the Hon'ble Supreme Court, we are fine in our view to hold that the word **“fine”** used by the learned trial Court in the impugned judgment is actually compensation under section 544-A Cr.P.C., in addition to imprisonment for life. Section 544-A Cr.P.C. was amended in the year 1972

under the Law Reforms Ordinance, however, no corresponding amendment to the extent of compensation has been brought in section 431 Cr.P.C. Had there been any intention of the legislature that the appeal on the death of the accused would not abate to the extent of compensation then definitely, section 431 Cr.P.C., would have also been amended to this extent, but such is not the position. For the sake of convenience and ready reference section 544-A Cr.P.C. is reproduced below:-

544-A. Compensation of the heirs to the person killed, etc.: (1) Whenever a person is convicted of an offence in the commission whereof the death of, or hurt, injury or mental anguish or psychological damage, to any person is caused, or damage to or loss or destruction of any property is caused, the Court shall, when convicting such person, unless for reasons to be recorded in writing, it otherwise directs, order the person, convicted to pay to the heirs of the person whose death has been caused, or to the person hurt or injured, or to the person to whom mental anguish or psychological damage has been caused, or to the owner of the property damaged, lost or destroyed, as the case may be, such compensation as the Court may determine, having regard to the circumstances of the case.

(2) The compensation payable under subsection (1) shall be recoverable as an arrears of land revenue and the Court may further order that, in default of payment or of recovery as; aforesaid the person ordered to pay such compensation shall suffer imprisonment for a period not exceeding six months, or if it be a Court of the Magistrate of the Third Class, for a period not exceeding thirty days.

(3) The compensation payable under sub-section (1) shall be in addition to any sentence with the Court may impose for the offence of which the person directed to pay compensation has been convicted.

(4) The provisions of sub-sections (2-B), (2-C), (3) and (4) of Section 250 shall as far as may be, apply to payment of compensation under this section.

(5) An order under this section may also be made by an Appellate Court or by a Court when exercising its powers of revision.”

12. As per the golden principles of interpretation of statute the courts while interpreting a provision of law having penal consequences, follow the rule of strict interpretation, according to which words not used by the Legislature in a statute, cannot be inserted by the courts. In order words when there is doubt about interpretation of a statute then the interpretation is to be made which favours the subject, as is held by the Hon’ble Supreme Court in case titled, “**Brig. (Rtd) F.B Ali and another vs the State (PLD 1975 SC 506)**”. The relevant part of the judgment is reproduced below:-

“The language of a penal statute has to be construed strictly and no question can possibly arise in such a statute “carrying forward any legal fiction”, which is not attracted by the plain words of a statute which seriously curtails the rights of a citizen”.

13. For what has been discussed above, we are firm in our view to hold that “**compensation**” under section

544-A Cr.P.C., being neither a sentence under section 53 PPC nor under section 302 PPC, therefore, the appeal of the appellant on his demise shall stand abate to the extent of corporal punishment as well as compensation. Resultantly, the word “**fine**” used by the learned trial Court, being against the mandate of section 302 PPC is of is no consequence whereas order for payment of the amount of above mentioned fine to the LRs of the deceased in terms of section 544-A Cr.P.C. shall also stands abated with appeal.

14. Adverting to the punishment awarded to the appellant under section 324 PPC, the same is imprisonment for 03 years and Rs.10,000/- as a fine. To the extent of sentence of imprisonment, the appeal of the appellant shall stand abate under section 431 Cr.P.C., however, to the extent of fine, we are going to decide the appeal on merits.

15. Perusal of the FIR depicts that complainant Sohail (PW.3) has charged the appellant and absconding co-accused for ineffective firing upon him and PW Rehman Gul, however, while appearing as PW.3 he deviated from his stance by attributing the role of firing to the accused only at the two deceased. Similar is the statement of eyewitness Rehman Gul, who while appearing as PW.4 also did not charge the accused for firing at him and the complainant. None of them has sustained any

injured. In this view of the matter, the learned trial Court has landed into the field of error by convicting the appellant under section 324 PPC and burdening him an amount of fine.

16. In view of the above discourse, this appeal against the deceased convict/appellant along with compensation being abated is hereby dismissed, however, appeal to the extent of sentence of fine under section 324 PPC is allowed on merit and the sentence of fine imposed upon the appellant deceased under section 324 PPC, is hereby set aside.

17. On the death of the convict, the connected Cr.R. No.13-P of 2018 for enhancement of sentence has become infructuous which is hereby dismissed.

Announced:
03.09.2020

JUDGE

JUDGE

DB of Hon'ble Mr. Justice Rooh ul Amin Khan;
And Hon'ble Mr. Justice S.M. Attique Shah

