

**SANOBAR KHAN**  
**Versus**  
**The STATE and others**  
**2018 P Cr. L J Note 181**

**JUDGMENT**

MOHAMMAD IBRAHIM KHAN, J.---On collection of the information regarding the implication/conviction/sentence of the accused-Petitioner, is arraigned in case FIR No. 50 dated 02.02.2013 charged under section 302, P.P.C. registered at Police Station Lal Qila District Dir Lower. He was convicted and sentenced to death under section 302(b), P.P.C. on two (2) counts to be hanged by his neck till his death. He was further required to pay compensation of Rs. 500,000/- within the meaning of section 544-A, Cr.P.C. to the LRs of the deceased. In default whereof he shall further undergo 6 months' S.I, vide the judgment of learned Additional Sessions Judge/Izafi Zila Qazi Dir Lower at Samarbagh Camp Court at Timergara dated 03.6.2014 in Sessions Case No. 3/II of 2013.

2. Later, an Appeal No. 153-M of 2014 was preferred before the Hon'ble Peshawar High Court Mingora Bench (Dar-ul-Qaza) Swat which met failure and the sentence was maintained.

3. Under the final round, the Hon'ble Supreme Court of Pakistan confirmed the death sentence. The record has been searched but nowhere the judgment of the Hon'ble apex Court has either been referred to or copy is available for ready reference.

4. This is a Criminal Revision against the findings delivered in the order/judgment of the learned Additional Sessions Judge/Izafi Zila Qazi Chakdara Dir Lower Camp Court at Timergara in criminal miscellaneous application submitted under section 338-E, P.P.C. in Session Case No.3/II of 2013. The theme reads for the release of accused/Petitioner Sanobar Khan on the basis of compromise effected with the LRs of the victims/deceased Mst. Sharafat Bibi and Ashfaq Khan. In a way the accused/Petitioner Sanobar Khan being sentenced to death to be hanged from his neck till he is declared dead on two (2) counts is to be saved in terms of compromise in the name of .

5. At first instance, the learned Additional Sessions Judge/Izafi Zila Qazi Chakdara allowed the parties to record their statements, but later the offence being committed in the name of honour killing termed to be non-compoundable, the application was dismissed through the impugned order.

6. We have heard arguments at length.

7. Learned counsel for the accused/Petitioner referred to various verses of the Holy Quran highlighted in "Fiqa Al-Islami Wadalta" followed by 2011 MLD 1919 (Lahore) "Abdul Hameed v. The State and another", 2008 MLD 34 (Lahore) "Muhammad Saleem v. The State", PLD 1992 Peshawar 176 "Nazar Ali and another v. The State", 2001 PCr.LJ 64 (Peshawar) "Manzoor Elahi v. The State and another" and 2011 SCMR 1444 "Zia alias Ahmi v. The State". The learned counsel mainly emphasized that under section 338-E(1), P.P.C. subject to the provisions of Chapter XLV and section 345 of the Code of Criminal Procedure, all offences under Chapter XLV, P.P.C. relating to homicide and hurt may be waived or compounded and the provisions of sections 309 and 310, P.P.C. shall mutatis mutandis apply to the waiver or compounding of such offences.

8. If at all the law provides that such like offence affecting the human body has been waived or compounded after the decision of the learned trial Court or the decision of appeal even up to the level of Hon'ble apex Court. When the application has been preferred before the learned trial Court, which should have determined all the questions relating to waiver or compounding of the offence, but through the impugned order the learned trial Court has unbind the minding. Inversely learned A.A.G appearing on behalf of the State referred to 2016 SCMR 291 "Karee, Nawaz Khan v. The State through PGP and another" and while opposing the Petition that since the accused/Petitioner is charged for the offence being non-compoundable, therefore prayed for dismissal of the present Petition.

9. Very recently, similar request was made before Hon'ble Bench at Dar-ul-Qaza Swat in Criminal Miscellaneous Application No. 1-M of 2017 that as the Qatl-i-amd was committed within the ambit of honour killing the parties may be allowed to record their statements before the learned trial Court. On this score alone in the said case the accused be acquitted of the charges. The request was turned down as the honour killing has since been declared non-compoundable, therefore the said appeal was to be decided on merits.

10. Besides deriving wisdom from the judgment of the Hon'ble apex Court reported as 2014 SCMR 1155 "Iqrar Hussain v. The State and another" whereby the Hon'ble apex Court has given some guidelines for subordinate Courts. If the matter pertaining to waiver and compounding of offences, it has been stressed that once a genuine compromise has been effected between the parties and LRs of the deceased were compensated and when no clear case of offence constituting "fasad-fil-arz" was made out then on acceptance of the compromise the accused was entitled to acquittal on such ground alone.

11. Here in this case the accused/Petitioner Sanobar has been convicted and sentenced to death on two (2) counts. He has exhausted all his remedies for his acquittal but the wheel of fortune did not favour him. He has committed the murder of

two innocent living souls, a female Mst. Sharafat Bibi whose only fault was noticed that she had come to the 'Baitak' for preparing cot where the deceased Ashfaq Khan had come there and both the deceased talked to each other.

12. According to the extra ordinary published authority in the Gazette Notification of Pakistan, National Assembly Secretariat on 06.10.2016 at Islamabad has amended the law in order to deter and prevent killings in the name or on the pretext of honour killing due to which hundreds of people especially women lost their lives every year. The offence has now been termed to be non-compoundable and it will be covered under the domain 'fasad-fil-arz' if committed in the name or on the pretext of honour. Seeking further guidance from the judgment of Hon'ble apex Court reported in Kareem Nawaz Khan's case cited as 2016 SCMR 291 as has been referred by learned A.A.G. for the State.

13. The only short point for consideration held before the Hon'ble the Chief Justice of Pakistan and is to be considered before this Bench as to whether compounding of an offence under section 302, P.P.C. with the LRs of the deceased will ipso facto dilute the effect of conviction of an accused when particularly the two deceased (Mst. 213 Sharafat Bibi and Ashraf Khan) in the case in hand have been done to death on the pretext of honour killing.

14. The accused/Petitioner being so infuriated when he killed two innocent persons merely that as to why Mst. Sharafat Bibi had come to the 'Baitak' and talked to the co deceased Ashfaq (without even being under compromising terms). The male deceased was none else but female deceased close relative (maternal uncle son), so in such state of affairs, accused/Petitioner has to suffer his sentence accordingly.

15. We are of the thought-out value judgment and have no exaggeration in percipience to hold that the impugned order of the learned Additional Sessions Judge/Izafi Zila Qazi dated 10.01.2017, in relation to dismissal of the application under section 338-E, P.P.C. has decorously been passed under the law.

16. This Criminal Revision Petition being shorn of worthiness stands dismissed.