

NASEEM AKHTAR and another
Versus THE STATE
PLD 2010 SC 938

JUDGMENT

MIAN SAQIB NISAR, J.---This judgment shall dispose of both the noted jail petition and the criminal miscellaneous application.

2. On the fateful day i.e. after midnight between 16/17-4-1997, Burhan, his wife Mst. Khurshid Bibi, daughters Mst. Sakina Bibi and Mst. Naziran Bibi, while they were asleep in the courtyard of their house, were brutally murdered by fire-arm shots and also through hatchet blows. Muhammad Anwar, who in relation is the grandson of Burhan, reported the incident to the Police Station Hujra Shah Muqem on 17-4-1997 through F.I.R. No.167, which incorporates the motive and the factual narration of the occurrence enunciating the specific role played by each of the petitioners is the murder of the aforementioned. The complainant, as also Muhammad Aslam to give ocular account of the occurrence, when appeared in the witness box, have deposed quite in line with the contents of the F.I.R. and have also credibly withstood the test of cross-examination. The medical evidence also is a source of corroboration to their testimonies, thus, on being tried under the provisions of sections 302/109/34, P.P.C. for committing quadruple murder of the named above, the trial Court has convicted the petitioners through its judgment dated 26-9-2001, with the following sentence:-- "Both Naseem Akhtar Muhammad and Muhammad Arshad for offense under section 302(b) read with section 34, P.P.C. on each count and sentenced each of them to death on each count. They were further directed to pay Rs.50,000 each on each count to the legal heirs of the deceased; in default in payment whereof to undergo S.-I. for six months each on each count." The appeal of the petitioners has failed before the High Court, which was dismissed vide judgment dated 31-10-2006, hence this petition.

3. Learned counsel for the applicants-petitioners has argued that as the occurrence took place at 2-00 a.m. (midnight), it was dark and, therefore, the alleged recognition of the offenders by the eye witnesses is absolutely improbable and an exaggeration. The complainant (P.W.12) and other eye-witness (P.W.13) are not the inmates of Burhan's house, rather even as admitted by them, they were asleep at their own respective abodes and rushed to the scene of occurrence on hearing the hue and cry, but the outer gate of victim's house was locked, therefore, they could not possibly enter therein and see the incident. It is also stated that the motive in this case is absolutely not proved, besides, there is previous enmity between the family of Ahsan and Muhammad Aslam (P.W.13) because, Muhammad Rafi, the brother of the later, was involved in a hudood case, got registered by Ahsan. It is also argued that the empties have not been

recovered from the scene of occurrence and were not sent for the purposes of matching with the weapon recovered from the petitioners, to the forensic science laboratory and, therefore, this corroborative piece of evidence is conspicuously missing from the case in hand. It is further submitted that there are material discrepancies in the statements of the eye witnesses which are, even, incompatible and contrary to the medical evidence and, thus, on this score, the judgments of the two Courts below, which have failed to notice the noted omission and lapses should be set aside. It is lastly argued that in the instant matter, all the legal heirs of the four deceased have forgiven the petitioners and valid compromise in this regard has been entered into between the parties, therefore, it is on account of the above that the disposal of the matter is sought through Criminal Miscellaneous Application No.165 of 2007.

4. Heard. We would first like to advert to the disposal of the noted compromise application. It is an admitted fact that Ahsan, who has entered into the compromise, is the sole legal heir of deceased Burhan and his two daughters, he was the real brother of the above named and is the father of petitioner No.1. According to the contents of the F.I.R. and the statement of P.W.12 (the complainant) which has been accepted as reliable by the two Courts below, the motive of the incident is imputed to Ahsan that he had asked Burhan for marrying his daughter-Mst. Nadrian Bibi with the said petitioner, which request was turned down whereupon, he demanded the transfer of four acres of his (Burhan's) land to his son, but this too was declined, resulting into the cause of the incident. Now, the compromise has been effected by the same Ahsan, who in a way is the stimulator and the instigator of the act due to which the whole family has been killed and is the beneficiary as a legal heir of deceased to inheritance of their estate; whereas Mst. Hamneedan Bibi, the other compromiser is the sister of Mst. Khurhsid Bibi, but she is not the legal heir of the other three deceased. Both of the above named are not the direct progeny of the victims but only their collaterals. Regarding Ahsan as is clear from the statement of facts mentioned above, the entire family has been done to death by petitioner No. 1 and his accomplice with an obvious object to avenge the refusal of marriage and in lieu thereof the transfer of property, which demand on the face of it was absolutely illegal, immoral and unscrupulous. It seems that Ahsan and his son, in fact, wanted to grab the land of Burhan either through marriage or otherwise but they could not accomplish their object and hence the incident. Therefore, in their circumstances the question which arises for consideration is if the compromise, by such a collateral, who on account of the murder of his real brother, by his own son, for the motive aforementioned, should necessarily be given due effect and the petitioners be acquitted on the basis thereof needs an answer.

5. In the above context, the relevant parts of the section 345(5) and (7), Cr.P.C. are reproduced as below. S.345(5) "When the accused has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court before which the appeal is to be heard." S.345(7) "No offence shall be compounded except as provided by this section". Before proceeding to analyze the noted provision, it may be pertinent to mention here that the expressions "an appeal is

pending" and "the Court" appearing *ibid* (section 345(5) for all intents and purposes of the law shall also mean the leave petition pending before this Court. Be that as it may, because of the use of word 'No', in both the subsections the command of law is in the negative form, thus, the composition of an offence is prohibited lacking (without) the leave of the Court. As per the Black's Law Dictionary (Fifth Edition 801), the noted expression is defined to mean "Permission obtained from a Court to take some action which, without such permission, would not be allowable." Thus, the object requiring leave from the Court as per the clear intention of the legislature is neither meaningless nor purposeless and it cannot be construed that while considering the compromise plea, even of a compromise which is lawfully entered, by free consent of the legal heirs, the Court, should act in a mechanical manner and allow the same as a matter of course or routine; should sit as a silent spectator or to conduct as a post office *simpliciter* and affix a judicial stamp upon it. Rather it is the duty and the prerogative of the Court to determine the fitness of the case for the endorsement and sanction of the compromise and in appropriate cases, where the compromiser and offender is directly or indirectly beneficiary of the crime; the offence is committed or is caused thereof, for an obvious object of grabbing the property of the deceased by the compromiser, through his offspring, who may ultimately benefits himself (the offender) as well, the Court may refuse to give an effect to such a deal, especially coupled with the scenario when the offence is gruesome, brutal, cruel, appalling, odious, gross and repulsive which causes terror and sensation in the society. The case in hand is the one in which the entire family has been killed while asleep, for no apparent cause but to avenge the refusal of marriage and grapple the property. And in my candid view, the instant case falls within the above category, therefore, the leave for the compromise is refused and the application is hereby dismissed.

6. As far as the merits of the case are concerned, the prosecution witnesses have given a quite accurate account of the incident; the ocular evidence have sustained the test of cross examination, and the testimonies of eye-witnesses, except some insignificant discrepancy have not been shattered; they have been believed by the two Courts below and such appreciation of evidence and the conclusions, drawn therefrom upon our own reappraisal thereof are not erroneous. The alleged weak or non proof of the motive as per the settled law is not fatal to the case of the prosecution. The role assigned to and performed by each of the petitioners has been clearly described by the eye witnesses which, to our mind, when tested on the touchstone of the medical evidence, is substantially corroborated. We do not find that the submissions made by the petitioners' counsel in any way brings this case within the ambit of either an unseen occurrence or a case for the benefit of doubt to the accused has been made out.

7. Resultantly, this petition being devoid of merits is, accordingly, dismissed. Leave to appeal declined. M.H./N-10/S

Petition dismissed