

GHULAM FARID alias FARIDA**Versus****THE STATE****P L D 2006 Supreme Court 53**

MUHAMMAD NAWAZ ABBASI, J.---This petition is directed against the judgment dated 5-3-2003 passed by a Division Bench of the Lahore High Court, Multan Bench in Criminal Revision petition arising out of a miscellaneous application filed by the petitioner before the trial Court for his acquittal from the charge under section 396 P.P.O on the basis of his compromise with the legal heirs of deceased.

2. The petitioner along with four others, was tried for the charges under section 396 P.P.O read with section 412 P.P.C for committing an offense of dacoity with murder, by the Special Court established under Anti-Terrorism Act, 1997, Dera Ghazi Khan and having been found guilty of the charge, was sentenced to death under section 396 P.P.O and imprisonment for a term of 10 years with fine under section 412 P.P.O with direction to pay compensation to the legal heirs of the deceased. The criminal appeal filed by the petitioner against his conviction and sentence was dismissed by a Division Bench of the Lahore High Court Multan Bench, vide judgment dated 7-10-1997 and further criminal petition for leave to appeal filed by him before this Court; was also dismissed. Subsequently, the petitioner having entered into a compromise with the legal heirs of the deceased, moved an application before the trial Court for compounding the offence on the basis of compromise in terms of sections 309 and 310 read with 338 (E) P.P.C and on dismissal of this application by the trial Court, vide order dated : 1-7-1999, he filed a criminal revision in the High Court which met the same fate and was dismissed, vide impugned judgment.

3. The learned counsel for the petitioner has contended that since the legal heirs of Manzoor Amin, deceased have forgiven the petitioner in the name of Almighty Allah, therefore, notwithstanding the statutory provisions of section 345 Cr.P.C., according to which an offence under section 396 P.P.C. is not compoundable, it would be deemed to have been compounded as ordained in Ayat Nos. 178 and 179 of Sura Al-Bagara in the Holy Qur'an, wherein Almighty Allah has commanded as under:--

178. ye who believe. The law of equality is prescribed to you in cases of murder: The free for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude. This is a concession and a Mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty.

179. In the Law of Equality there is (saving of) life to you, O ye men of understanding; that he may restrain yourselves.

4. Learned counsel forcefully argued that the law of the Holy Qur'an is supreme and the statutory Law which is in conflict to the law of Qur'an, must be ignored and that in the light of Philosophy of Punishment in Islam, all types of murders are compoundable notwithstanding the reason and the circumstances under which murder is committed. The learned counsel submitted that since the legal heirs of the deceased have forgiven the offender in the name of Almighty Allah, therefore, the provisions of section 345, Cr.P.C., of statutory law making an offence under section 396, P.P.C., non-compoundable being not in consonance with the Injunctions of Islam would be deemed to be un-Islamic and must be ignored and added that since in consequence to the compromise of the petitioner with the legal heirs of deceased, he has adequately compensated them which fact stood verified from the report sent by the learned Sessions Judge, Layyah to the Deputy Registrar (Judicial) of the Lahore High Court, Multan Bench, therefore, there would be no legal bar in giving effect to the compromise. The learned counsel states that in the light of observation made by the High Court the petitioner has also filed a Shariat petition before the Federal Shariat Court, Islamabad on the subject but it has not yet been decided. In short the contention of the learned counsel is that the provision of section 345, Cr.P.C., cannot curtail the power of the Court to compound a non compoundable offence if its compoundability is permissible in Islam and consequently, the compromise between the parties notwithstanding the statutory bar could be given effect in terms of sections 309 and 310 read with 338(E), P.P.C. The learned counsel submitted that the murder either committed during the course of commission of an offence of dacoity punishable under section 396 P.P.C., or under section 302 P.P.C., is Qatl and being commendable in Islam, would squarely fall within the ambit of sections 309 and 310 read with 338(E) and (F), P.P.C., for the purpose of compensation. The learned counsel, next argued that in the alternate, the purpose of lesser punishment and while placing reliance on the judgment of this Court in Muhammad Bashir v. State (PLD 1982 SC 139) submitted that in such a case in which murder has been pardoned by the legal heirs of the deceased the High Court, in exercise of its inherent power under section 561-A, Cr.P.C., and this Court under Article 187 of the Constitution of Islamic Republic of Pakistan have unlimited power to consider the question for reduction of sentence of death to imprisonment for life, in the interest of substantial justice.

There is no cavil to the proposition that the Courts at all levels without any legal impediment, while deciding the criminal cases on merits, in the regular proceedings, can consider the compromise of an offender with the victim or his legal heirs, as a mitigating circumstance for the purpose of question of sentence in a non-compoundable offence but after final disposal of a criminal matter, Courts cannot assume jurisdiction to re-open the case on merits in collateral proceedings arising out of miscellaneous application. The petitioner after losing the case on merits, before the trial Court, the High Court and also before this Court in regular proceedings moved an application to the Court of first

instance for his acquittal on the basis of his compromise with the legal heirs of the deceased wherein he also made an alternate prayer of reduction in sentence

4-A. We have heard the learned counsel for the petitioner, the Advocate-General of the Provinces and learned Deputy Attorney-General. The question for consideration is as to whether, the Court on the basis of the compromise of an offender with the victim or with the legal heirs of deceased as the case may be, can compound an offence which is noncompoundable in statutory law in the light of concept of forgiveness in Islam.

There are two kinds of punishment in Islam "Hadd" and "Tazir". The punishment of Hadd is in the Will of God whereas any other punishment is called Tazir. Islam recognizes the concept of deterrent punishment and also the theory of Tazir. Islam recognizes the concept of deterrent punishment and also the theory of repentance for the purpose of reformation and preservation of society and in the light of this concept, the offences in the Islamic Penal Laws are also divided into two categories namely compoundable and non-compoundable offences either punishable as Hadd or Tazir. The offences which are compoundable in Islam, have also been made compoundable under the statutory law and in compoundable offences, it is permissible for the Courts to give effect to the compromise between the parties at any stage of the proceedings before or after the final conclusion of the matter whereas a compromise in non-compoundable offences, cannot be given legal cover at any stage. The offence of murder punishable with death under section 302 (a) as Qisas and under section 302(b) as Tazir is compoundable under the law but the murder taken place during the course of committing dacoity punishable with death under section 396, P.P.C., is not compoundable. The careful examination of Ayat Nos. 178 & 179 of Surah Baqara would reveal that there is no conflict of the statutory law to the law of Islam regarding forgiveness as the offence under section 302 P.P.C., and offence under section 396 P.P.C., are entirely different and distinct offences, therefore, notwithstanding the pardon given by the legal heirs of the deceased to the petitioner who has been awarded death penalty under section 396 P.P.C., he could not avail the benefit of sections 309 and 310 read with 338 (E) P.P.C: This Court in Muhammad Rawab v. State (2004 SCMR 1170) has laid down as under:--

"The provisions as contained in section 345, Cr.P.C., cannot be stretched too far by including the non-compoundable offence therein under the grab of humanitarian grounds or any other extraneous consideration. The offences committed by the appellant are not of grave and alarming nature but the same are against the society as a whole and cannot be permitted to compound by any individual on any score whatsoever. It may be noted that tabulation of the offences as made under section 345, Cr.P.C., being unambiguous remove all doubts, uncertainty and must be taken as complete and comprehensive guide for compounding the offences. The judicial consensus seems to be that "The Legislature has laid down in this section the test for determining the classes of offences which concern individuals only as distinguished from those which have

reference to the interests of the State and Courts of law cannot go beyond that test and substitute for it one of their own. It is against public policy to compound non-compoundable offence, keeping in view the state of facts existing on the date of application to compound. No offences shall be compounded except where the provisions of section 345, Cr.P.C., are satisfied as to all matters mentioned in the section."

5. The offence of dacoity is not compoundable either under pure Islamic Law or under the statutory law of Pakistan, therefore, the contention of the learned counsel that notwithstanding the circumstances under which the murder had taken place, Qatl with no distinction is compoundable in Islam and the bar of statutory law would not be applicable, has no substance. There is concept of right of Afw and Badal-e-Suleh in a case of Qatl-i-Amd, punishable under section 302(x), P.P.C., as Qisas and this right can also be exercised with permission of Court in a case in which punishment of death is awarded as Tazir under section 302(b) but the concept of Afw and Badl-e-Sulch under the existing law has not been made applicable to a case under section 396, P.P.C., in which death is awarded for murder taken place during the course of committing dacoity and thus the Court cannot competently give effect to a compromise in a non-compoundable offence against the policy of law. The petitioner in the present case was awarded sentence of death under section 396, P.P.C. for murder as Tazir which had taken place during the course of committing dacoity and the offence under section 396, P.P.C., being not compoundable, the provision of sections 309 and 310, P.P.C., read with 338(E), P.P.C., could not be made applicable to give effect to a compromise in a non-compoundable offence under the law. In the matter of interpretation and application of provision of Chapter XVI, P.P.C., in respect of the offences mentioned therein or the matters ancillary or akin thereto Court can seek guidance G from Holy Quran and Sunnah as provided in section 338(F), P.P.C., but the Court cannot bring a non-compoundable offence within the purview of section 345, Cr.P.C., by virtue of section 338-F, P.P.C., for the purpose of compounding it on the basis of compromise. This is settled law that Courts can interpret the provisions of law but cannot change or substitute such provisions and also cannot go beyond the wisdom 133 of law. The contention of the learned counsel that the compromise between the parties at least could be treated a mitigating circumstance for the purpose of lesser punishment, has also no substance. This Court while upholding the judgment of the High Court by virtue of which conviction and sentence awarded to the petitioner by the trial Court was, maintained, has already dismissed the petition for leave to appeal. The present petition has arisen out of the proceedings in a miscellaneous application moved by the petitioner for his acquittal on the basis of his compromise with the legal heirs of the deceased, I therefore, in these proceedings, it was not possible for the High Court to re-open the case on merits in exercise of its powers under section 561-A, Cr.P.C., and similarly this Court is not supposed to undertake such an exercise under Article 187 of the Constitution of Islamic Republic of Pakistan and consider the question relating to the

quantum of sentence on the basis of compromise between the parties in such a heinous offence which is considered a crime against the Society.

6. In light of the foregoing discussion, this petition being devoid of any merit is dismissed. Leave is refused.

Leave to appeal refused