

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

**MR. JUSTICE CH. EJAZ YOUSAF, CHIEF JUSTICE
MR. JUSTICE DR. FIDA MUHAMMAD KHAN**

**CRIMINAL MISCELLANEOUS NO. 248/I OF 2005 IN
CRIMINAL APPEAL NO. 64/Q OF 1997**

Ali Dost son of Saleh Muhammad
Resident of Mal Tehsil Nushki

Aplicant/Apellant

Versus

The State

Respondent

Counsel for State

Mr. Shafiqat Munir Malik,
Assistant Advocate-General
with Mr. Shoaib Abbasi,
Advocate

F.I.R. No., date and Police Station

Nil, 10.6.1995, P.S.
Ahmadwal

Date of the Order of the Trial Court

30.7.1997

Date of Institution

5.5.2005

Date of Hearing

6.10.2005

Date of Decision

6.10.2005

JUDGMENT:

CH. EJAZ YOUSAF, CHIEF JUSTICE.- This is an application for fixation of the amount of Diyat, permission to pay the same in installments and grant of bail to the applicant, in the meantime.

2. It has been stated in the application that this Court vide judgment dated 5.5.2000 was pleased to modify the sentence inflicted on the applicant by the learned Sessions Judge, Nushki thereby reducing the sentence of imprisonment to seven years R.I. as Taazir and directing him to pay minimum amount of Diyat to legal heirs of the deceased instead of paying compensation to them, under section 544-A Cr.P.C. It has been further stated in the application that the applicant having undergone his substantive sentence of imprisonment had requested the Jail Authorities to determine the amount of Diyat but needful was not done, instead he was asked to approach the Court, hence this application. Applicant has prayed that since due to financial constraints, he is not in a position to pay the amount of Diyat in lump sum, therefore, after fixation, he may be allowed to pay the

amount of Diyat in installments and in the meantime may also be admitted to bail.

3. Notice of the application was issued to the State, in response whereof Mr.M.Shoaib Abbasi, Advocate has appeared. States that since occurrence in the instant case had taken place on 10.6.1996 therefore, amount of Diyat has to be determined keeping in view the value of Diyat declared by the Federal Government for the financial year 1995-96. He has added that since as per S.R.O. No.601(1)/95 dated 2.7.1995 the value of Diyat for the financial year 1995-96 was declared as one lac eighty-nine thousand, nine hundred and six (Rupees 1,89,906) only therefore, the applicant would be required to pay the same. He has, however, expressed his no objection in case the applicant is allowed to pay the amount of Diyat in installments. He has added that keeping in view financial position of the applicant the amount of Diyat, fixed by the Federal Government, can even be reduced by the Court as was done in the case of Amjad Mehmood Vs. The State 2003 reported as SCMR 1850. Mr. Shafqat Munir Malik,

Assistant Advocate-General, Punjab who was also directed to assist the Court too, is of the opinion that applicant is required to pay the amount of Diyat, due at the time of occurrence.

4. It would be pertinent to mention here that subject to the Injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet Muhammad (Peace be upon him), value of Diyat has to be fixed by the Court keeping in view financial position of the convict as well as legal heirs of the victim which can not be less than the value of thirty thousand six hundred and thirty grams of silver and the Federal Government, has to declare the same on the first day of July, each year, or any subsequent date. The provision of section 323

PPC is explicit in this regard which reads as follows:-

“323. Value of diyat: (1) The Court shall, subject to the Injunctions of Islam as laid down in the Holy Quran and Sunnah, and keeping view the financial position of the convict and the heirs of the victim, fix the value of diyat which shall not be less than the value of thirty thousand six hundred and thirty grams of silver.

(2) For the purpose of sub-section (1), the Federal Government shall, by notification in the official Gazette, declare the value of silver, on the first day of July each year or

amount of Diyat in installments and in the meantime may also be admitted to bail.

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(2) For the purpose of sub-section (1), the Federal Government shall, by notification in the official Gazette, declare the value of silver, on the first day of July each year or

on such date as it may deem fit, which shall be value payable during a financial year.”

5. Though, in the instant case, judgment by the trial Court was pronounced on 30.7.1997 and appeal filed against the same, was decided by this Court on 5.5.2000 yet, we see force in the contention raised by the learned counsel for the State that the amount of Diyat has to be fixed by the Court as per value of Diyat declared by the Federal Government at the time of occurrence. Since, in the instant case occurrence took place on 10.6.1996 and value of thirty thousand six hundred and thirty grams (30,630) of silver for the year 1995-96 was declared by the Federal Government, vide S.R.O.No.601(1)/95 dated 2.7.1995 (PLD 1996 P.550) at Rs.one lac eighty nine thousand nine hundred and six (Rupees 1,89,906) only therefore, we hold that applicant is required to pay the same amount to the legal heirs of the deceased.

6. So far as the request for grant of permission to pay the amount of Diyat in installments is concerned, it may be pointed out here that

section 331 PPC provides that Diyat may be made payable in lump sum or in installments spreading over a period of three years from the date of the final judgment and the convict may also be released on bail if he furnishes surety equivalent to the amount of Diyat. Here it would be advantageous to have a glance at section 331 PPC which reads as under:-

“331. **Payment of diyat.**- (1) The diyat may be made payable in lump sum or in installments spread over a period of three years from the date of the final judgment.

(2) Where a convict fails to pay diyat or any part thereof within the period specified in sub-section (1), the convict may be kept in jail and dealt with in the same manner as if sentence to simple imprisonment until the diyat is paid full or may be released on bail if he furnishes security equivalent to the amount of diyat to the satisfaction of the Court.

(3) Where a convict dies before the payment of diyat or any part thereof, it shall be recovered from his estate.”

We are inclined to allow the request.

7. Upshot of the above discussion is that the value of Diyat payable to the legal heirs of the deceased, in case of the applicant, is fixed at Rs.1,89,906/- which shall be payable in 36 equal monthly installments, within a period of three years. The applicant, in the

on such date as it may deem fit, which shall be value payable during a financial year.”

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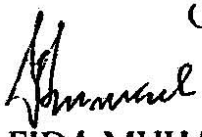
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meantime, is admitted to bail on his furnishing surety in the sum of Rs.1,90,000/- (one lac ninety thousand) with one surety and P & bond in the like amount to the satisfaction of the learned trial Court with the undertaking to pay the amount of Diyat within the prescribed period. In case of default in payment of the amount of Diyat by two consecutive installments the surety bond shall be forfeited and the outstanding amount shall become payable in lump sum.


(CH. EJAZ YOUSAF)
Chief Justice


(DR.FIDA MUHAMMAD KHAN)
Judge

Islamabad, the
6th October, 2005.
Bashir/*

FIT FOR REPORTING.


Chief Justice