

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT

MR.JUSTICE CH. EJAZ YOUSAF, CHIEF JUSTICE
MR.JUSTICE DR.FIDA MUHAMMAD KHAN
MR.JUSTICE S. A. RABBANI

CRIMINAL APPEAL NO.46/L OF 2004

1.	Shehzad Ahmad alias Mithu son of Muhammad Ashraf, Caste Rehmani, Resident of Village Mado Khalil, police Station, Ladhewala Warriach, District, Gujranwala.	--	Appellants
2.	Abid son of Inayat, Caste Jat Hinjra, Resident of Mado Khalil, police station Ladhewala Warriach, District, Gujranwala.		
			Versus
	The State	--	Respondent
	Counsel for the appellants	--	Mr.Kausar Pervaiz, Advocate.
	Counsel for the State	--	Mr.Anees Muhammad- Shehzad, Advocate.
	No.date of FIR and Police station		No.79 dated 1.5.2003 P.S.Ladhewala Warriach.
	Date of the order of Trial Court	--	24.11.2003
	Date of institution	--	21.2.2004
	Date of hearing	--	27.4.2005
	Date of decision	--	27.4.2005

JUDGMENT

CH. EJAZ YOUSAF, CHIEF JUSTICE.- This appeal is directed against the judgment dated 24.11.2003 passed by the learned Additional Sessions Judge, Gujranwala whereby the appellants namely, Shehzad Ahmad alias Mithu son of Muhammad Ashraf and Abid son of Inayat were convicted under section 302(b) PPC and sentenced to undergo life imprisonment each. They were also ordered to pay compensation in the sum of Rs.two lacs each to the legal heirs of deceased Mst. Shamim Akhtar under section 544-A Cr.P.C. or in default of payment of compensation to further suffer S.I. for six months each. Benefit of section 382-B Cr.P.C. was, however, extended to the appellants.

2. In the instant case, the appellants were charged under section 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as "the Ordinance") alongwith section 302/34 PPC for allegedly committing zina-bil-jabr with Mst.Shamim Akhtar and killing her.

3. On the conclusion of trial the appellants were convicted under section 302(b) PPC and sentenced to undergo punishments as mentioned in the opening para hereof. however, they were acquitted of the charge under section 10(3) of "the Ordinance" for want of proof.

4. During pendency of the appeal Crl.Misc.Application No.313/L of 2004 was submitted wherein, it was stated that since the parties have entered into a compromise and legal heirs of deceased Shamim Akhtar, have forgiven the appellants in the name of Allah, therefore, the appellants may be acquitted of the charge. Alongwith the application, compromise deed as well as affidavits of the legal heirs were also filed which, for verification, were sent to the learned trial Judge vide order dated 3.3.2005. The learned District and Sessions Judge, Gujranwala, vide his report dated 24.3.2005, has confirmed that the deceased was succeeded by Ghulam Muhammad (father) Mst.Samina Bibi (mother) and Mst.Shaheen Akhtar (daughter) and all the three legal heirs have not only entered into the compromise but

have also forgiven the appellants in the name of Allah. He has further pointed out that Diyat amount in the sum of Rs.2,11,000/- has been deposited in the name of minor daughter of the deceased by the applicants and that the compromise deed is genuine.

5. Mr.Kausar Pervaiz, Advocate, learned counsel for the appellants has stated that since authenticity of the compromise deed has been verified by the learned trial Judge and amount of Diyat has been paid, therefore, both the appellants may not only be acquitted of the charge but the amount of compensation, ordered to be paid by the learned trial Judge, under section 544-A Cr.P.C. may also be waived because the appellants by paying "Diyat" have compensated legal heirs of the deceased. Alternatively, he has submitted that since the applicants are poor, they having been confined in Jail are not in a position to pay the amount of compensation and that too, in lump sum, therefore, it may not only be reduced considerably but may be allowed to be paid in installments.

6. Mr.Anees Muhammad Shehzad, Advocate, learned counsel for the State, in view of the compromise, expressed his no objection to acquittal of the appellants but has stated that since payment of compensation under section 544-A Cr.P.C. is mandatory, therefore, it may not be waived. However, may be reduced suitably.

7. Before dealing with the proposition it would be advantageous to have a glance at section 544-A Cr.P.C. which reads as follows:-

“S.544-A. Compensation to the heirs of 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 arrear 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 which 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.

A plain reading of the above provision leads to the inference that compensation under section 544-A Cr.P.C. is to be paid for causing death, hurt, injury or mental anguish or psychological damage to any person or destruction of his property. The use of word "shall" in sub-section (1), in the provision, denotes that compliance with the provision is not permissive but imperative and payment of compensation, there under, is in addition to the punishment awarded for the offence. Since "Diyat" is not a sort of compensation as claimed by the learned counsel for the appellants but is a "punishment" as defined by section 53 of the Pakistan Penal Code, therefore, payment

thereof, whether in lieu of the sentence of imprisonment or otherwise, does not, in our view, absolve the appellants from their responsibility to pay the amount of compensation as required under section 544-A Cr.P.C. Here, it would also be beneficial to reproduce section 53 P.P.C. which reads as follows:-

“S.53.- Punishments. The punishments to which offenders are liable under the provisions of this Code are,-

- Firstly Qisas;
- Secondly Diyat;
- Thirdly Arsh;
- Fourthly Daman;
- Fifthly Ta'zir;
- Sixthly Death;
- Seventhly Imprisonment for life;
- Eighthly Imprisonment which is of two descriptions,
 - (i) Rigorous, i.e., with hard labour;
 - (ii) Simple;
- Ninthly Forfeiture of property;
- Tenthly Fine.

In the above context, it would be worthwhile to mention here that in the cases of Fareed Baksh vs. Saeed Ahmad and others and Mst.Sarwar Jan v Ayub and another 1995 SCMR 1679, it was held by the Hon'ble Supreme Court of Pakistan that provision of section 544-

A Cr.P.C. is mandatory and that under this section even, if the convict undergoes imprisonment in default of payment of compensation, then also the said amount can be recovered from him as arrears of land revenue. The above view was affirmed by the Apex Court in the case of Muhammad Tufail vs. Sessions Judge, Attock and two others reported as PLD 2004 SC 89. Reference, in this regard, may also be usefully made to the case of Muhammad Younis vs. The State 2002 SCMR 1308 wherein, a sentence of 14 years imprisonment was inflicted on the accused under section 311 PPC as Tazir, despite compromise, and compensation to the legal heirs was enhanced from Rs.70,000/- to Rs.2,50,000/-under section 544-A Cr.P.C. In the case of Muhammad Ameer vs. The State – 2001 P.Cr.LJ 1530 it was held that payment of compensation to the legal heirs of the deceased being in addition to any sentence awarded to accused for the commission of an offence, doctrine of double jeopardy would not be attracted. in the case of Umer Hayat vs. The State (1990 P.Cr.LJ 125) it was laid down that compensation required to be paid under section 544-A Cr.P.C. to

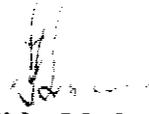
the victim of aggression, by a convict, is in the form of an additional burden on him, to any sentence, which he is visited with and needs to be assessed and imposed independently of the sentence of fine so levied. In the case of Muhammad Hanif vs. Abdur Rahman and others – 1977 SCMR 471 it was held that grant of compensation under section 544-A Cr.P.C. is mandatory and the Court was bound to record reasons if it considers otherwise.

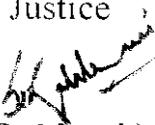
8. In the wake of above, we hold that since payment of compensation under section 544-A Cr.P.C. is mandatory and is in addition to the sentences inflicted on the appellants, therefore, notwithstanding the fact that the appellants have already deposited Diyat amount in the name of the minor, they are bound to pay the amount of compensation. However, keeping in view the submissions made by the learned counsel for the appellants that the appellants are poor and have meagre monetary resources, we are inclined to reduce the amount of compensation, payable by the appellants to the legal heirs of the deceased, from Rs.two lacs each to that of Rs.one lac

each. The appellants are directed to deposit the amount of compensation in four quarterly installments within a period of one year in the trial Court. The same shall be paid to the legal heirs of the deceased as per their respective shares, under the law. The amount of compensation falling in the share of minor, alongwith the amount of Diyat shall be invested in any profitable scheme approved by the Government or in any Scheduled Bank with the condition that the amount of profit/dividend accruing thereon would automatically be re-invested on the expiry of first term, and the practice shall be carried on till such time the amount is withdrawn by the minor on attaining the age of majority or else is withdrawn by her guardian duly appointed by a Court of competent jurisdiction.

9. The upshot of the above discussion is that since all the legal heirs of the deceased who are present in Court, have confirmed execution of the compromise deed, therefore, the same is accepted. Convictions and sentences recorded against the appellants under section 302(b) PPC are set aside and they are acquitted of the charge.

The appellants shall be released subject to their furnishing surety bonds/undertakings to the effect that they shall pay the amount of compensation within a period of one year. In case of default in payment of two consecutive installments the amount of compensation shall be recovered from the appellants as arrears of land revenue.


(Dr.Fida Muhammad Khan)
Judge


(CH. EJAZ YOUSAF)
Chief Justice

(S. A. Rabbani)
Judge

Islamabad, dated the
27th April, 2005
ABDUL RAHMAN/**

FIT FOR REPORTING

CHIEF JUSTICE