

IN THE FEDERAL SHARIAT COURT
(Original Jurisdiction)

PRESENT

MR. JUSTICE RIAZ AHMAD KHAN, CHIEF JUSTICE
MR. JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN
MR. JUSTICE SHEIKH NAJAM UL HASAN
MR. JUSTICE ZAHOR AHMED SHAHWANI
MRS. JUSTICE ASHRAF JAHAN

SHARIAT PETITION NO.02/I OF 2011

Syeda Viqar un Nisa Hashmi,
R/o Gilani House, Street No.62, G-6/4,
Islamabad

..... Petitioner

Versus

Federal Government of Pakistan through Ministry of Law Justice &
Parliamentary Affairs, Islamabad.

..... Respondent

Counsel for Petitioner

..... In person

Counsel for Federal Govt.

..... Mr. M. Pervez Khan Tanoli,
Standing Counsel

Counsel for Balochistan Govt.

..... Mr. Muhammad Ayaz Khan Swati,
Additional Advocate General

Counsel for Sindh Govt.

..... Mr. Ahsan Hameed Dogar,
Advocate

Counsel for Punjab Govt.

..... Mr. Rashid Hafeez,
Additional Advocate General

Counsel for KPK Govt.

..... Mr. Arshad Ahmad,
Assistant Advocate General

Date of Institution

..... 13.06.2011

Date of hearing

..... 22.04.2016

Date of decision

..... 02.05.2016

JUDGMENT

DR. ALLAMA FIDA MUHAMMAD KHAN, Judge.-

The Petitioner Syeda Viquar-un-Nisa Hashmi, Advocate has challenged Section 306(b)(c), 307(1)(b)(c), 309(1) and 310(1). She has prayed that these Sections, relating to Qisas and Diyat being against the Injunctions of Islam be declared as such. The impugned Sections read as under:-

“306(b)(c) Qatl-i-amd not liable to qisas: Qatl-i-amd shall not be liable to qisas in the following cases, namely:-

- (b) when an offender causes death of his child or grandchild, howlowsoever; and
- (c) when any wali of the victim is a direct descendant, howlowsoever, of the offender.

307(1)(b)(c) Cases in which qisas for qatl-i-amd shall not be enforced: Qisas for qatl-i-amd, shall not be enforced in the following cases, namely:-

- (b) when any wali voluntarily and without duress, to the satisfaction of the Court, waives the right of qisas under Section 309 or compounds under Section 310; and

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(c) when the right of qisas devolves on the offender as a result of the death of the wali of the victim, or on the person who has no right of qisas against the offender.

309(1) Waiver-Afw (عفو) of qisas in qatl-i-
amd: (1) in the case of qatl-i-amd, an
adult sane wali may, at any time and
without any compensation, waive his
right of qisas.

310(1) Compounding of qisas (Sulh) (صلح) in
qatl-i-amd: (1) in the case of qatl-i-amd,
an adult sane wali may, at any time on
accepting badal-i-sulh, compound his
right of qisas:

Provided that giving a female in
marriage shall not be a valid badal-i-sulh
(بدل) .”

2. In addition to the above provisions, the Petitioner also
assailed Sections 313 and 338 of PPC alongwith Section 345(1) &
(2A) Cr.P.C. on the same grounds.

3. This Petition was admitted to regular hearing on
21.01.2013. Comments were called from the Federal as well as the
Provincial Governments. The Governments of Punjab and KPK have

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filed their comments. Both the Governments in their comments have opposed the Petition and relied on several judgments of Supreme Court reported as 1997 SCMR 1307 (Sheikh Muhammad Aslam & another Vs. Shauakat Ali alias Shauka), 2004 SCMR 236 (Bashir Ahmed Vs. The State) and 2005 SCMR 599 (Khan Muhammad Vs. The State).

4. We heard the learned Petitioner. The learned standing counsel for the Federal Government as well as the representatives of Provincial Governments were also heard. In addition to opposing the Petition and defending the impugned provisions, they contended that Section 345 Cr.P.C is according to the Injunctions of Islam. They also placed reliance on the judgments reported as PLD 1996 SC 1 (Abdul Haque vs. The State and another), 2000 SCMR 338 (Abdus Salam vs. The State), PLD 2005 SC 252 (Muhammad Abdullah Yousaf and others vs. Miss Nadia Ayub and others) and PLD 2015 SC 77 (Zahid Rehman vs. The State)

5. Before proceeding further we would like to briefly refer to the history of judicial background of the issues under discussion in Petitions regarding compoundability. First of all a question was raised before the Honourable High Court Peshawar to consider and decide whether the provisions with regard to Section 302 PPC, showing the same to be uncompoundable (at that time) and the then Section 345 of the Cr.P.C. were part and parcel of the substantive law and therefore had to be amended accordingly. The Hon'ble High Court directed those laws to be amended. Thereafter in case "Muhammad Riaz Versus Federal Government", Section 302 PPC and Sections 345 and 381 Cr.P.C etc. were challenged in several Shariat Petitions on the ground that these were repugnant to the Injunctions of the Holy Quran and Sunnah. This Court vide judgment "Muhammad Riaz Versus Federal Government reported as PLD 1980 FSC page 1", allowed seven Petitions questioning the vires of Sections 302 PPC and 345 Cr.P.C. (as these were before amendment) and directed that

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amendment in Sections 302, 304 PPC and 345 Cr. P.C. etc be made by 1st April, 1981. Appeal against the said judgments was preferred before the Shariat Appellate Bench of Honourable Supreme Court of Pakistan. That appeal was dismissed vide judgment reported as "PLD 1989 SC Page 633" and it was held that the offence of Qatle Amd under Section 302 was compoundable and as such was to be amended alongwith Section 345 Cr.P.C. etc. as well. In compliance with the said judgment the relevant Sections of PPC and Cr.P.C. were initially amended by promulgation of an Ordinance which consequently substituted the old law and converted the same into its present form, including the Sections impugned now before this Court.

6. We have also given our anxious consideration to the submissions made by the Petitioner in her Petition as well as vehemently contended during her arguments before the Court. She dwelt at large on the said provisions as well as on Section 311 PPC and terming the honour killing as "*Fasad Fil Arz*" contended that

there should be no compoundability in granting waiver to or compounding the offence of Qisas (قصاص) with an accused who takes law in his hands and commits a heinous offence of murder without adopting recourse to the judicial process. In reply to a Court question, however, she conceded that the State is empowered to legislate and enact laws for maintaining law and order and protecting life, honour and property of its citizens. Actually the answer is undoubtedly in affirmative. In our view, the Islamic State is bound to exercise its power and authority within the limits prescribed by the Injunctions of Islam, through the chosen representatives of the people.

7. Before discussing the point of view advanced by the learned Petitioner, we deem it appropriate to refer to Section 311 PPC (as amended) which reads as under:-

“311PPC Ta'zir after waiver or compounding of right of qisas in qatl-i-amd:
Notwithstanding anything contained in Section 309 or Section 310 [where all the walis do not waive or compound the right

of qisas or [if] the principle of fasad-fil-arz (فساد في الارض) [is attracted]] the Court may, [***] having regard to the facts and circumstances of the case, punish an offender against whom the right of qisas has been waived or compounded with [death or imprisonment for life or] imprisonment of either description for a term which may extend to [fourteen] years [but shall not be less than ten years] as ta'zir.”(underlining done by us).

It is very clear from a bare reading of the impugned Section that it already provides for the relief sought by the learned Petitioner. It starts with the word “notwithstanding anything contained in Section 309 or 310” pertaining to waiver of Qisas in Qatl-i-amd and compounding of Qisas in Qatl-i-amd and by authorizing the court to award, interalia, even death sentence to such a culprit despite the waiver of or compounding the right of Qisas by the adult sane Wali.

This amendment, which was made in Section 311 PPC by virtue of “Law Amendment Act 2004 Act. 1 of 2005” clearly envisages the gravity of the offence, as highlighted by the learned Petitioner, and

regards the same as “*fasad-fil-arz*”. Probably the said amendment has escaped the sight of the learned Petitioner.

8. The learned Petitioner placed reliance on the following

Verse:

وَإِذَا الْمَوْءِدَةُ سُئِلَتْ ۖ بِأَيِّ ذَنْبٍ قُتِلَتْ ۖ

“And (remember the Day of Judgment) when the girl-child buried alive shall be asked: for what offence was she killed.” (81: 8-9)

9. We may point out that the above Verses, relied upon by

the learned Petitioner, do not directly or indirectly pertain in any way

to the question raised by her in the Petition, even if a holistic view is

taken, because the new-born female baby who was usually buried

alive, soon after her birth, was obviously not being killed on account

of any violation of some specific crime related to honour nor such

brutal action was ever termed as “honour killing”. The learned

Petitioner could not make reference to any other ‘Nass’ of Holy Quran

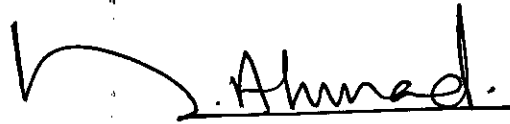
or Sunnah of the Holy Prophet ﷺ as is required for deciding a

Petition filed under Article 203-D of the Constitution of Pakistan.

10. In this view of the matter, this Petition being misconceived and without force is dismissed accordingly.



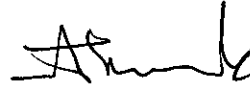
MR. JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN



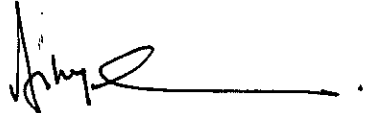
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CHIEF JUSTICE



MR. JUSTICE SHEIKH NAJAM UL HASSAN



MR. JUSTICE ZAHOOR AHMED SHAHWANI



MRS. JUSTICE ASHRAF JAHAN

Announced in open Court
On 12.5.2016 at Islamabad
Umar Draz/*

File for reporting

