

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 ZAHOOR AHMED SHAHWANI
MRS. JUSTICE ASHRAF JAHAN

SHARIAT PETITION NO. 04/I OF 1995

Director and Members Al-Quran Research Academy,
Khyber Bazar, Peshawar

.... Petitioner

Versus

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

... Respondent

Counsel for Petitioner ... Nemo.

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 ... 20.12.1997

Date of hearing ... 22.04.2016

Date of decision ... 02.05.2016

JUDGMENT

ALLAMA DR. FIDA MUHAMMAD KHAN, Judge.-

The Director and Members of Al-Quran Research Academy Peshawar, --the Petitioners -- through Abdullah Sani, Advocate, have filed this Petition whereby Sections 54, 55, 55A, 309,310, 312, 313 PPC as well as Section 345 Cr.P.C. have been challenged on the ground that these provisions of law are repugnant to the Injunctions of the Holy Quran.

2. This Petition was admitted to regular hearing on 28.03.2007. Comments were called from Federal Government as well as Provincial Governments. The Governments of Pakistan and Punjab have filed their comments. Both the Governments in their comments have opposed the Petition.

3. On account of illness the learned Petitioner who had been regularly coming to the Court, however, could not attend the Court today.

4. As is apparent from the contents of the Petition, the Petitioners have vehemently contended that, according to the Holy Quraan, the punishment of Qatl-i-amd is only death and it is not at all compoundable. Reliance has been placed on Verse No.99 of Sura Al-Nisa and Verses No. 178 and 179 of Sura Al-Baqra with a further explanation of Verse No.33 of Sura Bani Israeel. The Petitioners have also referred to the harmful effects of compoundability/leniency provided in these Sections which have resulted in enormous increase in commission of offences like murder, abduction, dacoity and heinous social crimes.

5. Before proceeding further we would like to briefly refer to the history of judicial background of the issues regarding non compoundability of the offence of قتل عمد. Initially, all the relevant Sections of law relating to non-compoundability of Qatle Amad and Section 302 PPC (showing the same to be uncompoundable at that time) and Section 345 of the Cr.P.C. (as it was then before amendment) were challenged before the Honourable High Court

Peshawar. The Honourable High Court Peshawar held those Sections to be repugnant to the Injunctions of Islam and directed the same to be amended accordingly. Thereafter, Section 302 PPC and Sections 345 and 381 Cr.P.C were challenged in several Shariat Petitions before Federal Shariat Court on the ground that these were repugnant to the Injunctions of the Holy Quran and Sunnah. This Court vide its judgment “Muhammad Riaz versus Federal Government” reported as PLD 1980 FSC page 1, also allowed seven Petitions questioning the vires of Sections 302 PPC and 345 Cr.P.C. etc. and directed that amendment in Section 302 and 304 PPC etc. be made accordingly 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, therefore, ordered that the relevant provisions of law be amended. 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. In this background, it is obvious that these Sections which have been impugned before us have the blessings of Hon'ble Shariah Appellate Bench who after long and due deliberations had delivered the above judgment containing detailed reasons based on the Injunctions of Islam as contained in the Holy Quran and Sunnah of the Holy Prophet ﷺ.

6. We may also point out that the point of view advanced by the learned Petitioners while explaining the Verses relied upon by them is not at all supported by any commentator of the Holy Quran throughout the last 14 centuries. Verse No. 33 of Surah Bani Israeel is reproduced herein under:-

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ ۗ وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوْلِيهِ سُلْطٰنًا فَلَا يُسْرِفُ فِي الْقَتْلِ ۗ
إِنَّهُ كَانَ مَنصُورًا 33 -

“Do not kill any person whom Allah has forbidden to kill, except with justice. We have granted the heir of deceased who has been wrongfully killed, the authority (to claim retribution); so let him not exceed in slaying. He shall be helped.”

The “authority” in this Verse refers to the right of the victim to claim Qisas (equal retribution) or Diyat (blood money) from the murderer. He is also vested with the “authority” (right to forgive, to waive or compound his right of Qisas). Thereafter, the State is bound to honour his right, in any form he wants. Despite his right to do so, however, he is warned that he must not cross the limits prescribed by Allah. It is pertinent to point out that there is a lot of wisdom contained in the aforementioned "authority" granted to the heir/heirs of the victim (deceased). If he/they willingly agree to bury the hatchet, genuinely patch up the dispute with the accused, put an end to the animosity and restart an amicable life, it will not only add to the public peace and tranquility but will definitely save their present and successive generations from consistent tensions, persistent apprehensions, continuous unending chain-reactions of bloodshed by

one or the other side. Thus it is in the larger public interest (مصلحت عامه) to grant legal sanctity to compoundability only in the cases of Qisas (قصاص) which primarily pertain to the right of citizens (حقوق العباد), as compared to the cases of “Taazir” which pertain to the right of State which, in order to stop crimes altogether, reserves the right and usually do not allow its compoundability. Both these types of Injunctions aim at maintaining and ensuring peace and law and order in the society at large, by one way or the other.

7. Here we deem it pertinent to add that Islamic law is divine in its original sources. As such it necessitates great caution and meticulous care in dealing with the issue of interpretation of Verses or in changing its universally accepted meanings to suit varying times, places and needs. Therefore interpretation or meaning of a Quranic Verse must have full support by the Sunnah of the Holy

Prophet ﷺ .

8. We have no hesitation to point out that like several other Arabic words, the word (ولى) mentioned in the above Verse has also several meanings including heir/heirs. In the context of above Verse, however, it clearly refers to the heir of the deceased victim and none else, as has been consistently, continuously and unanimously held by all schools of Islamic law and jurisprudence.

Regarding the grant of عفو, we would like to refer to Verses No.178

and 179 of Surah Al-Baqra, which are reproduced hereinunder:-

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ ۚ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ ۚ فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْ بِالْمَعْرُوفِ ۚ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ۚ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ ۚ فَمَنْ اعْتَدَىٰ بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ ۝١٧٨ وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ ۝١٧٩

“Believers! Retribution (قصاص) is prescribed for you in cases of killing: if a freeman is guilty then the freeman; if a slave is guilty then the slave; if a female is guilty, then the female. But if something of murderer’s guilt is forgiven/remitted by his brother this should be adhered to in fairness, and payment be made in a goodly manner. This is an alleviation and a mercy from your Lord; and for him who commits excess after that there is a painful chastisement. People of understanding, there is life for you in retribution (قصاص) that you may guard yourselves against violating the Law.”

A bare reading of the above Verses clarifies the meaning to show that the right to forgive granted to the heir of a victim, killed or grievously injured, is only in cases of "قصاص". It is worth mentioning that the word (i.e.قصاص) has been mentioned twice in the said Verses. The learned petitioners have mixed up the same with "قتل خطاء" in their petition but it is not so. In cases of "قتل خطاء", the Holy Quraan does not impose the penalty of death but prescribes, interalia, payment of ديت to the heirs. (Al-Nisa:92)

9. So far as the translation and explanation of "Wali" (17:31) and "Afw" (4: 178, 179) as given by the learned Petitioner is concerned, it finds no support from any source of law, right from the period of Holy Prophet صلی اللہ علیہ وسلم till date.

10. While considering the question raised in the Petition, it seems pertinent to briefly mention something about the sources of Islamic law. Undoubtedly the Glorious Quraan is the first source of Islamic law and jurisprudence. It is the fundamental source wherein

there is absolutely no doubt (2:2) as it is from the Lord of the worlds (32 : 2). It has been sent down for administration of justice between mankind (4:105). Legislation in the Holy Quraan was revealed gradually and intermittently to meet the requirements of events in Islamic State and society.

11. The Sunnah (i.e. sayings, deeds or tacit approvals) of the Holy Prophet ﷺ is the second most important source after the Glorious Quraan and is unanimously considered supplementary to, and explanatory of Glorious Quraan, as ordained therein in the following words:

“Obey Allah and obey the Messenger of Allah” (5: 92)

“Who obeys the Messenger of Allah, in fact obeys Allah”

(4: 80)

“And whatsoever the Messenger of Allah gives you, take it and whatsoever he forbids abstain from it” (59:7)

Various other verses similar in wording or in meaning confirms that adherence to Sunnah is obligatory and, therefore, held in principle as

such by all the Islamic schools, subject to verification of its authenticity. The major reason as mentioned in the Glorious Quraan for this was the fact that as a duty of mission the Messenger of Allah (ﷺ) was bound to teach (2: 129), (3:164) explain (16:44) setting practical manifestation and providing a role model of implementation (33: 21) to show how to obey and implement the civil, criminal, personal, fiscal, international and other laws ordained by Almighty Allah in the Glorious Quraan. That is why Injunctions of Islam refer to the Injunctions as laid down in the Holy Quraan and Sunnah of the Holy Prophet ﷺ, as mentioned in Article 203D.

12. In this view of the matter this Petition, being misconceived, is dismissed accordingly.

MR. JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN

MR. JUSTICE RIAZ AHMAD KHAN
CHIEF JUSTICE

MR. JUSTICE SHEIKH NAJAM UL HASSAN

MR. JUSTICE ZAHOOR AHMED SHAHWANI

MRS. JUSTICE ASHRAF JAHAN

Announced in open Court
on _____ at Islamabad
Umar Draz/*

Fit for reporting