

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. J.A. No.472 of 2023
Confirmation Reference No.05 of 2023

Presented Before:

Justice Tasneem Sultana
 Justice Fiaz Ul Hassan Shah

Appellant : Hanif Shah through
 Mr. Mohsin Ali Khan, for Pauper
 Appellant

Respondent : The State, through
 Mr. Mumtaz Ali Shah
 Addl. Prosecutor General, Sindh

Date of hearing : 04.07.2025
Date of order : 04.07.2025

J U D G M E N T

Tasneem Sultana J: The appellant faced trial before learned Additional Sessions Judge-I/Model Criminal Trial Court, Thatta (Trial Court) in a Case No.274 of 2021 arisen out of FIR No.10 of 2021, registered at PS Garho, under Section 302(b) of Pakistan Penal Code (1860) ('PPC'), vide impugned Judgment dated 30.08.2023, he was convicted under Section 302 (b) PPC and sentenced to death as Tazir and also to pay Rs.500,000/- to the legal heirs of deceased as compensation under Section 544-A of Criminal Procedure Code (1898) ('Cr.P.C.'), in case of non-payment thereof to undergo six months simple imprisonment; the said conviction and sentence has been impugned by the convict/appellant through instant appeal, whereas confirmation reference No.05 of 2023 has been sent by the trial court as required under Section 374 Cr.P.C. Both matters are being decided through this single Judgment.

2. Brief facts of the prosecution case are that complainant Kamal Shah reported at Police Station Garho to the effect that his deceased father namely Hasan Shah had advised the accused Hanif Shah to be gentle and not to fight with neighbors, upon which the accused got annoyed and had issued threats to the deceased Hasan Shah that he would not spare him; On 19.03.2021 his deceased father, after taking dinner, was sleeping on the floor in his own katcha/mud house, situated adjacent to the house of the complainant, then at 03:30 a.m., the complainant woke up upon commotion and in the light

of torch saw towards the house of his father that the accused Hanif Shah, having hatchet in his hand, shouted and caused sharp sided hatchet blows at the left side of the neck of his deceased father Hasan Shah. Meanwhile, his father-in-law Ali Muhammad Shah and P.W. Muhammad Shah also reached there. Thereafter the accused fled with his hatchet. Thereafter, they noticed that blood was oozing from the injuries and the father of the complainant died on the spot. Police was informed, ASI Abdul Qadir Khushk reached there and completed the legal formalities. After burial of his father, the complainant appeared at police station Garho and lodged F.I.R of the incident.

3. After completing all necessary formalities, Police submitted the Charge Sheet. The necessary documents as required under Section 255-C Cr.P.C. were provided to him. The trial Court framed formal Charge against him, to which he pleaded not guilty and claimed to be tried.

4. During pendency of the appeal, the appellant convict died inside the jail. In this view of the matter, the main legal point for consideration before us is whether on the death of the appellant-convict, the appeal shall abate under section 431 Cr.P.C., only to the extent of his Capital Punishment i.e. death sentence as Tazir under Section 302(b) PPC or also to the extent of compensation under section 544-A Cr.P.C.?

5. Heard. Record perused.

6. Section 431 Cr.P.C., provides that every appeal under Section 411-A sub-section (2), or section 417 shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant. For the sake of convenience and ready reference, section 431 Cr.P.C., is reproduced as under:

"431. Abatement of Appeals: Every appeal under section 411-A sub-section (2), or section 417 shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant".

Dr. Aram

7. Chapter-III of Pakistan Penal Code, 1860, provides following ten types of punishments:

- i. Qisas
- ii. Diyat;
- iii. Arsh;
- iv. Daman;
- v. Ta'zir;
- vi. Death
- vii. Imprisonment for life.
- viii. Imprisonment which is of two descriptions namely, (i) (Rigorous i.e. with hard labour); (ii) Simple.
- ix. Forfeiture of property
- x. Fine.

8. Similarly, section 302 PPC, provided the following punishment for the offence of Qatl-i-amd:-

- (a) Punishment of death as Qisas;
- (b) Punishment of death or imprisonment for life as Ta'zir having regard to the facts and circumstances of the case, if the proof in either of the forms specified in section 304 is not available; or
- (c) Punishment of imprisonment of either description for a term which may extend to twenty-five years, where according to the injunctions of Islam the punishment of qisas is not applicable.

Thorough perusal of section 302 PPC would reveal that it does not include "compensation" as a punishment for the offence of Qatl-e-Amd. Similarly, "compensation" is also not included in the schedule of punishments provided under section 53 PPC. The word "compensation" also does not find mention in section 431 Cr.P.C., rather word "fine" has been specifically used therein. Though on conviction of an offender under section 302 PPC, the courts normally, in addition to capital punishment, imposed compensation upon the offender/convict to be paid to the legal heirs of the deceased in terms of section 544-A Cr.P.C., recoverable as arrears of land revenue, but in terms of section 544-A Cr.P.C., the compensation is not a sentence under section 302 PPC, as per ratio of the judgment of Hon'ble Supreme Court in case titled,

J. Iqbal

"Azmat Ullah vs the State" [2014 SCMR 1178]. The relevant part of the judgment in this regard is reproduced below:

"Keeping in view the facts and circumstances of the case this appeal is partly allowed, the conviction of the appellant for an offence under section 302(b) PPC is converted into that for an offence under section 302(c) PPC and consequently his sentence is reduced from rigorous imprisonment for twenty-five years to rigorous imprisonment for ten years. The sentence of fine passed against the appellant by the learned trial court and upheld by the Lahore High Court, Lahore has been found by us to be unwarranted because section 302(b) or 302(c) PPC, do not contemplate any such sentence. Instead of fine we direct that the appellant shall pay a sum of Rs.50,000/- to the legal heirs of the deceased by way of compensation under section 544-A Cr.P.C. or in default of payment therefore he shall undergo simple imprisonment for six months. The benefit under section 382-B Cr.P.C. shall be extended to him. This appeal is disposed of in these terms."
(Bold and underlines are ours which implied emphasis).

9. In view of the judgment (supra) of the Hon'ble Supreme Court, we are of the view to hold that the learned trial Court in the impugned judgment allowed compensation under section 544-A Cr.P.C., in addition to the death sentence. Section 544-A Cr.P.C. was amended in the year 1972 under the Law Reforms Ordinance, however, no corresponding amendment to the extent of compensation has been brought in section 431 Cr.P.C. Had there been any intention of the legislature that the appeal on the death of the accused would not abate to the extent of compensation then definitely, section 431 Cr.P.C., would have also been amended to this extent, but such is not the position. For the sake of convenience and ready reference section 544-A Cr.P.C. is reproduced below:

544-A. Compensation of the heirs to 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

J. Iqbal

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 arrears 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 subsection (1) shall be in addition to any sentence with the Court may impose for the offence of which the person directed to pay compensation has been convicted.

(4) The provisions of sub-sections (2B), (2C), (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."

10. As per the golden principles of interpretation of statute the courts while interpreting a provision of law having penal consequences, follow the rule of strict interpretation, according to which words not used by the Legislature in a statute, cannot be inserted by the courts. In order words when there is doubt about interpretation of a statute then the interpretation is to be made which favours the subject, as is held by the Hon'ble Supreme Court in case titled, "Brig. (Rtd) F.B Ali and another vs the State (PLD 1975 SC 506). The relevant part of the judgment is reproduced below:

"The language of a penal statute has to be construed strictly and no question can possibly arise in such a statute "carrying forward any legal fiction", which is not attracted by the plain words of a statute

Shameem


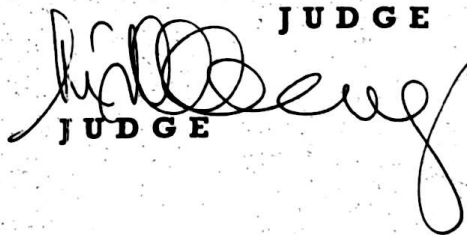
which seriously curtails the rights of a citizen".

11. For what has been discussed above, we are firm in our view to hold that "compensation" under section 544-A Cr.P.C., being neither a sentence under section 53 PPC nor under section 302 PPC, therefore, the appeal of the appellant on his demise shall stand abate to the extent of capital punishment as well as compensation to the LRs of the deceased in terms of section 544-A Cr.P.C. shall also stands abated with appeal.

12. In view of the above discourse, this appeal against the deceased convict/appellant along with compensation being abated is hereby dismissed.

13. On the death of the convict, the connected reference No.05 of 2023 under Section 374 Cr.P.C. for confirmation of death sentence has become infructuous which is hereby dismissed.

Announced:
04.07.2025


JUDGE

JUDGE