

HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS
Criminal Appeal No. S-155 of 2024

Present
Mr. Justice Dr. Syed Fiaz ul Hasan Shah.

Appellants/ accused: 1. Pervaiz Iqbal S/o Muhammad Iqbal
2. Amir Sohail S/o Ibrahim
3. Ibrahim S/o Rehmant Ali.
Through Mr. Muhammad Ali Arain, Advocate,

Respondent: The State
Through, Mr. Ghulam Abbas, D.P.G Sindh.

Complainant: Asad Ali S/o Amjad Ali.
Through, Mr. Abdul Hameed Bajwa, advocate.

Date of hearing: 25.02.2025.
Date of Judgment: 25.02.2025.

J U D G M E N T

Dr. Syed Fiaz ul Hasan Shah, J: The Appellants Pervaiz Iqbal, Amir Sohail, Ibrahim have filed present Criminal Appeal under section 410 of Criminal Procedure Code, 1898, against the Judgment of conviction dated 30.09-2022 passed by learned Assistant Sessions Judge, Digri in Sessions Case No. 370/ 2021 (*Re: The State Vs. Pervaiz Iqbal & others*) emanating out of FIR No.80/2021 U/Ss 436, 427, 114 of Pakistan Penal Code 1860, registered with Police Station Tando Jan Muhammad. The Appellants have convicted as under;

1. Section 436 of PPC:
Each accused Amir Sohail S/o Ibrahim and Ibrahim s/o Rehmant Ali are convicted and sentenced to suffer S.I for five years and each accused shall pay fine of Rs.100,000/-and in case of default in payment of fine amount, each of them shall suffer S.I for six months
2. Section 427 of PPC:
Each accused Amir Sohail S/o Ibrahim and Ibrahim S/o Rehmant Ali are convicted and sentenced to suffer S.I for two years and each accused shall pay fine of Rs. 10,000/- and in

case of default in payment of fine amount, each of them shall suffer S.I for three months.

3. Section 114 of PPC:

Accused Pervaiz Iqbal S/o Muhammad Iqbal, is convicted and sentenced to suffer S.I for five years and each accused shall pay fine of Rs.100,000/- and in case of default in payment of fine amount, each of them shall suffer S.I for six months.

S.I for two years and each accused shall pay fine of Rs.10,000/- and in case of default in payment of fine amount, each of them shall suffer S.I for three months.

2. The appellants were granted bail by suspending the Judgment of Conviction vide order dated 11.11.2022 by this Court. Later, in response to the notice the counsel for the appellants and respondents as well as the Dy Prosecutor General appeared in Court along with the parties and filed application U/S 345(2) Cr.P.C and another application U/S 345(6) Cr.P.C and requested to set aside the conviction and sentence by accepting the compromise application, as the parties admittedly have patched up their matter.

3. The DPG appeared on behalf of State stated that the sections are non-compoundable and oppose the grant of application. On the other hand, in rebuttal, the counsel for the appellants and counsel for complainant placed referred the case laws i.e. PLD 2016 Peshawar 26, PLD 2013 Lahore 651 and 2007 MLD 1269.

4. I have noticed that parties are neighbors and they have dispute with regard to distribution of share in respect of Devi wood, a wood use for domestic fire burning purpose as an alternate arrangement where natural gas is not available. This is monetary dispute culminated into criminal case and according to the parties they are neighboring in agricultural land and they are living, cultivating agricultural land

harmoniously and behaving properly, therefore, they have patched up their differences and decided to live in peace and harmony.

5. It may be observed that incident allegedly occurred on 27-08-2021 while F.I.R was registered on 09-10-2021 after considerable delay of 43 days as such point of consultation cannot be ruled out in the present case. Besides, no photograph has been produced nor any substance has been recovered from the crime scene nor soil of the land or burnt properties have been collected for chemical examination; as such matter doesn't fall within definition of section 425 P.P.C as the prosecution has failed to bring wrongful loss or damage or quantum causes destruction of any property. The prosecution witnesses have not deposed the value of destroys or diminishes of the alleged case property which creates serious doubt in a prudent mind that such incident has not taken place, therefore, the necessary ingredients of mischief as provided under section 425 P.P.C read with section 430 P.P.C are not available. For the convenience, the evidence of the complainant Asad Ali is reproduced as under:

"On 27.08.2021 on Friday, I alongwith my Hari namely Imran at our land to see the standing crop of banana, at that time all the three accused namely Pervaiz Iqbal, Amir Ibrahim and Ibrahim came on motorcycle and Pervaiz Iqbal asked his fellows came alongwith that since we (complainant) are not giving our share from the woods so put it on fire. At that time accused Amir holding bottle filled with petrol. Amir sprinkled the petrol on the wood and accused Ibrahim stock down the match. On seeing the flames of fire I and my Hari Imran started shouting for help and Amir, Asghar and Mashooque came to the spot on hearing our shouts, the accused fled from the spot when all the three reached there. I got the incident to the knowledge of the nekmards of the village, got registered the FIR against the accused on 09.10.2021. I produce FIR as Ex.3/A. On 10.10.2021 I alongwith I/O went to the place of incident and inspected the place of incident where observed the wooden in ashes. He prepared such memo of

sarzameen engaging Nabeel and Chatoon as mashirs. Accused present in court are same.”

6. No doubt section 436, Pakistan Penal Code 1860 is not-compoundable in law, however, such non-compoundability provision and law should be read in isolation. It is settled rule of interpretation of Statute that the beneficial interpretation which favors citizen should be given meaning and law should not read in isolation. Generally, a compromise is acceptable, even in non-compoundable offences being redeeming factor and particularly when parties decided to bring peace, harmony and coherence in society, then it is fair to consider it liberally. As the law is guide source of minimally acceptable behavior in society with the dynamic and pragmatic approach to discourage the isolationary interpretation. Guidance can be taken from the case of Ali Raza & another v. State (PLD 2013 Lahore 651). It has been held as under:

“Even otherwise, it has always been observed that the compromise even in non-compoundable offences is a redeeming factor, which brings peace, harmony and coherence in the society and it may have far-reaching positive effects, in the lives of warring-parties. “

7. In another case “State v. Irganullah Qazi” (2007 MLD 1269) while placing reliance on “Hussain Bux v. State” (PLD 2003 Karachi 127) that in the larger interest of two neighbours persons for the benefit of congenial neighborhood environment compromise in non-compoundable offences have accepted while appraising reasonableness that even in case of heinous crime like murder, parties are allowed to compound and compromise and on comparison the present case and its offences are auxiliary in nature.

8. In view of above I allow the compromise application while setting aside the impugned Judgment dated 30.09.2022 passed by the learned Assistant Sessions Judge, Digri and appellants are acquitted in the present case and set free for will. The appellants are present on bail, their bail bonds are cancelled and surety stands discharged. The instant Appeal is hereby disposed of in terms of compromise. These are the reasons of my short order dated 25-02-2025.

JUDGE

Adnan Ashraf Nizamani