IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Appeal No. S-15 of 2024 (new)
Criminal Appeal No. S-185 of 2017 (old)

Appellant:	Aslam @ Ghaloo s/o Punhoon Khoso Present in person (on bail). His counsel Mr. Hemandas S. Sanghani advocate is called absent without intimation.
State:	Through Mr. Shahzado Saleem, Additional Prosecutor General, Sindh
Complainant:	Shr. Lachmi In person alongwith her brother Laloo Mal.
Date of hearing :	27.06.2024
Date of Judgment :	27.06.2024

JUDGMENT

MUHAMMAD SALEEM JESSAR. J- By means of instant Criminal Appeal, the appellant has assailed Judgment dated 18-08-2017 passed by learned First Additional Sessions Judge, Mirpurkhas (trial court), vide Sessions Case No.181 of 2016, Re: S/V Aslam @ Ghaloo Khoso, being outcome of FIR No.54 of 2016, registered at P.S Jhudo, for offence under Sections 376, 511, 452(2), 337-H(ii), 34 PPC, whereby appellant was convicted as under:-

> For offence punishable U/S 452 PPC to suffer R.I for three years and to pay fine of Rs.50,000/= and in case of default in payment of fine to suffer S.I for four months more.
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> However, benefit in terms of section 382-B Cr.P.C was extended to the appellant.

2. Concisely, the complainant Shrimati Lachmi lodged FIR at P.S Jhudo on 18-6-2016 at 1210 hours, alleging therein that accused Aslam

alias Ghaloo was teasing her with intention to make friendship with him. On 18-6-2016 she, her sister Shrimati Baby, mother Shrimati Devi and father Kewal were present in the house. Meanwhile at about 11-30 a.m accused persons namely Aslam alias Ghaloo Khoso and Niaz Ali Khoso, duly armed with pistol, forcibly entered into their house. Accused Niaz Ali Khoso pointed out his pistol and accused Aslam alias Ghaloo attempted to commit rape with her. She raised hue and cry, on which her sister Shrimati Baby, Gajoo, Nanak and others arrived there and caught hold accused Aslam alias Ghaloo while accused Niaz Ali Khoso by making ariel firing ran-away from the spot, Thereafter, complainant party brought captured accused Aslam alias Ghaloo at P.S, handed over him to police and then complainant lodged the FIR in terms stated above.

3. After registration of FIR investigation was conducted. On completion of investigation, challan was submitted before learned Magistrate concerned. Since the offence is exclusively triable by the Court of Sessions, therefore, learned Magistrate sent the R&Ps to Sessions Judge, Mirpurkhas, wherefrom it was assigned to the trial Court for its disposal in accordance with law. Learned trial court framed formal Charge against the accused at Ex.02, to which he pleaded not guilty and claimed trial vide his plea at Ex.02-A. In order to prove its Charge, the prosecution examined in all five (05) witnesses at Ex.03 to 08, who produced and recognized certain documents, then prosecution closed its' side at Ex.09. Statement of accused, as required under Section 342 Cr. P.C was recorded at Ex.10 wherein he denied the allegations leveled by prosecution against him; however, neither he examined himself on Oath nor produced any witness in his defense. Finally learned trial Court after hearing the arguments of

learned counsel for the parties, convicted and sentenced to present appellant, as mentioned supra.

4. At the very outset appellant and complainant/ victim Shr. Lachmi present in court state that due to indulgence of community people they have settled down their differences outside the court; hence they do not intend to prosecute each other anymore. The complainant at the moment is also victim states that she has no objection if by granting instant appeal appellant may be acquitted of the charge.

5. Learned A.P.G after going through impugned judgment submits that prosecution has failed to establish its charge against appellant in terms of section 376 r/w section 511 PPC, therefore, he has been acquitted by the trial court from said charge; however, charge against him in terms of section 452 PPC was proved, therefore, he has been convicted and sentenced to 03 years. As far as proposal with regard to compromise between the parties outside the court is concerned, learned A.P.G submits that offence with which appellant has been convicted is not compoundable, therefore, he is not entitled for the relief sought for. Learned A.P.G; however, is not in a position to controvert the fact that complainant/ victim who is present in court does not want to prosecute the appellant anymore; in such an eventuality lingering on the proceedings would fruit nothing but wastage of the precious time of the court.

6. Heard. Record perused.

7. No doubt appellant was tried for the charge u/s 376, 511 r/w section 452 PPC; however, at the time of trial prosecution did not adduce sufficient evidence in respect of sections 376, 511 PPC, hence trial court

while making discussion over points for determination has acquitted the appellant from the charge(s) of section 376, 511 PPC and has convicted him for the charge of section 452 PPC only. Though the offence with which the appellant stands convicted is not compoundable, however, appellant has remained for some time inside jail besides the offence with which he stands charged pertains to year 2016, thus has been facing agony of trial as well as proceedings of instant appeal right from 2016 till today i.e. for a period of about 08 years, which is sufficient punishment for him. At this juncture when the complainant/ victim herself does not want to prosecute the appellant anymore and they being inhabitants of same area want to live peacefully by maintaining law and order situation as well as tranquility, the superior courts have time and again held that in such a situation parties may be allowed to live peacefully, even in a case when the offence with which accused is charged is non-compoundable. In this connection I am fortified and guided from the dictum laid down by learned Bench of this court in case of ***ASHIQ SOLANGI and another Vs. THE STATE*** (**PLD 2008 Karachi 420)**, wherein it is held as under:-

> ***"2. The applicants were convicted under sections 452, 337-H(2), 506/2 and 148, P.P.C. The legal question is that certain offences are compoundable and certain offences are not compoundable. I am of the clear view that if the main offence is compoundable and parties have compromised against themselves then the small offences should be treated as compromised though under the statute those are not compoundable. In the present revision keeping in view the compromise which has taken place between the parties outside the Court, it is not proper to uphold the conviction specially when the complainant does not want to pursue his case anymore. In the circumstances I accept the revision application and order acquittal of both the applicants from the charge. Their conviction and sentence is set aside. They are present on bail, their bail bonds are cancelled and sureties discharged."***

08. In case of ***AAMIR and 2 others*** Vs. ***The State and another*** (**2011 MLD 1468 [Lahore])**, Honourale Lahore High Court, held as under:

> ***"9. Now I advert to the factum whether compromise can be effected in non-compoundable offence. I am of the view that the compromise is meant to promote harmonious living and maintain cordial relations between the parties. This view was affirmed by august Supreme Court of Pakistan in the case of Ghulam Shabbir and 2 others v. The State (2003 SCMR 663)."***

09. In case of ***GHULAM SHABBIR and 2 others*** Vs. ***The State***, reported in **2003 SCMR 663**, decided by a Full Bench of Honourable Supreme Court, which was also relied upon in the case of ***AAMIR and 2 others*** (supra), the accused were tried for the charge under sections 302/324/337-A(ii)/148 and 149, P.P.C read with section **9 and sections 6, 7 and 8 of Anti-Terrorism Act, 1997** by the Special Court constituted under Anti-Terrorism Act, 1997, in pursuance of F.I.R. No. 174, dated 13th August, 1993 registered at Police Station Jand, District Attock. On conclusion of the trial the trial Court found the accused persons guilty of the charge and vide judgment dated 23rd September 2000 convicted and sentenced them for the abovesaid offences. The accused were also convicted under Section 9 of ATA, 1997 and sentenced to undergo 4 years' R.I. each with fine of Rs.10,000 each in default whereof to undergo 2 months' R.I. In Appeal, Honourable Lahore High Court, Rawalpindi Bench, Rawalpindi, modified the sentences awarded under Sections 302/149, whereas the accused were acquitted for the offences under Sections 324/149 PPC. However, rest of the conviction / sentence was maintained, which also included conviction and sentence of R.I. for four years under Section 9 of the ATA, 1997. Thereafter, a Criminal

Miscellaneous Application was filed on behalf of the accused persons, wherein it was stated that rival parties have compounded the offence and have forgiven to each other in the name of Almighty Allah and in this behalf a compromise had been effected, therefore, it was prayed that the same may be accepted and the accused may be acquitted of the charge. Honourable Supreme Court allowed said application holding as under:

> ***"Accordingly, the permission to compound the offence in view of subsection (5) of section 345 of the Cr.P.C. is accorded to the parties in order to maintain cordial relations and bury their hatchets forever. Resultantly, Criminal Miscellaneous No. 123 of 2002 is allowed...... Since leave to compound the offence is allowed, as such we set aside the conviction / sentence of the petitioners as well as impugned judgment dated 25th September, 2001. The petitioners namely Ghulam Shabbir son of Ghulam Yousaf, Ghulam Raza son of Ghulam Mohi-e-Din and Mushtaq Ahmed are acquitted under subsection (6) of section 345, Cr.P.C. They are directed to be released forthwith, if not required in any other case."***

10. It may be pointed out that in captioned case Honourable Supreme Court allowed the compromise application although the accused were also convicted under Section 9 of the Anti-Terrorism Act, 1997 which is a **non-compoundable** offence.

11. In another case of ***ALI RAZA and another*** Vs. ***The State and another***, reported in **PLD 2013 Lahore 651**, it was held as under:

> ***"If the loss allegedly sustained by the complainant and his wife at the hands of the accused / petitioners has been made good, to their entire satisfaction, there may be no harm in allowing the instant applications for bail after arrest. 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."***

12. In case of ***TASAWAR HUSSAIN*** Vs. ***The STATE and another*** (**2021 YLR Note 124 [Islamabad]**), it was held as under:

> *"7. Section 345, Cr.P.C. relates to compounding offences and subsection (1) of section 345 provides that the offences under the sections of the Pakistan Penal Code specified in the first and second columns of the table given therein may be compounded by the persons mentioned in the third column of that table.*
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> *8. Offence of robbery as mentioned in section 392 of Pakistan Penal Code does not find mention in the table given in section 345, subsection (1) of the Criminal Procedure Code and, therefore, is not compoundable. Similarly, section 411 of Pakistan Penal Code does not figure in the table mentioned under section 345, Cr.P.C. and, therefore, is not compoundable. However, the fact that the complainant himself has executed the affidavit, wherein he has undertaken that he has forgiven the petitioner/accused on the name of Allah Almighty and shall have no objection if the petitioner / accused is acquitted or released on bail after arrest, may be considered as the ground for the grant of bail in the interest of justice and equity. Where the complainant party is no longer willing to prosecute the matter any further then it is not for this Court or the Courts subordinate to it to compel the parties to do so, as the saying goes, "you can take the horse till the water but you cannot make him drink".*
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> *9. In the similar case reported in "Muhammad Akram v. The State 1995 MLD page 1826" the factum of compromise was taken into consideration and bail was granted. More or less, the same view was taken in a case of rape in the case reported in "Mst. Mussarat Elahi alias Bibi v. The State 1997 PCr.LJ 1193", and the Supreme Court of Pakistan took judicial notice of a compromise in a matter which was otherwise not compoundable and converted the petition for Special Leave to Appeal into an appeal and, therefore, accepted the appeal by reducing the sentence to that which had already been undergone in the case of Ghulam Ali v. The State reported as 1997 SCMR 1411.*
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> *10. Thus, I am fortified in my opinion that judicial notice of a compromise having taken place can be taken even in offences which are not compoundable.*

13. In case of ***MUHAMMAD JAMIL and others*** Vs. ***The State and another***, reported in **2013 P Cr. L J 1458 [Lahore]**, it was held as under:

> ***"Though, the accusations, mentioned in the F.I.R., constitute non-compoundable offences yet, compromise / reconciliation between the parties has always been held a redeeming feature, which brings peace and harmony in the society and only for this reason, the courts have always respected enthusiasms and passion of the parties to compound the offence, being compoundable or not. This is of course, not a job of the courts to pressurize the parties to continue with their hostilities or prosecute each other for years."***

14. In view of above, it would be in the best interest of justice, equity and fair play that the compromise arrived at between the parties in instant case in respect of non-compoundable offences is accepted / allowed to take effect.

15. In the circumstances, proposal so advanced by the appellant and complainant/ victim herself before this court as well in view of above precedential law, is hereby accepted to. Consequently, appeal in hand is hereby allowed. Resultantly impugned judgment dated 18-08-2017 penned down by learned 1st Additional Sessions Judge, Mirpurkhas, vide S.C.No.181/ 2016 Re: S/V Aslam alias Ghaloo Khoso being outcome of FIR bearing Crime No. 54/ 2016 registered u/s 376, 511, 452(2), 337-H(ii), 34 PPC at P.S Jhudo, is hereby set aside to the extent of conviction of appellant only. Resultantly, appellant is acquitted from the charge. Appellant is present before court on bail, his bail bond stands cancelled and surety furnished by him is hereby discharged.

JUDGE

Mirpurkhas.
Dated: 27th June, 2024.
Saleem