

kills him, the offence committed by the assailant is the same as if he would have
the intended victim. 29 Cr LJ 280

302. Punishment of qatl-i-amd.-- Whoever commits qatl-i-amd shall, subject
to the provisions of this Chapter be--

- (a) punished with death as qisas;
- (b) punished with 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

to twenty-five years where according to the Injunctions of Islam the punishment of qisas is not applicable 110[

Provided that nothing in this clause shall apply to the offence of qatl-i-amd if committed in the name or on the pretext of honour and the same shall fall within the ambit of clause (a) or clause (b), as the case may be.]

COMMENTS

Scope. -- Accused can come within the mischief of this section only if death is direct result of the injury. **PLD 1976 S.C. 377.** Ingredients of the offence are felonious intention and an injury causing the death. **PLD 1976 S.C. 377** Mere altercation not sufficient to bring exception in operation. **PLD 1962 Dacca 424** Culpable homicide may not be murder where the mental state is not of the special degree of criminality required by S. 300. **1981 SCMR 329.** No culpability in putting a person to death in execution of legal punishment. **PLD 1980 FSC 1.** Section 302 (As amended)--A compoundable offence. 1992 P.Cr.L.J. 982 Substitution of charge u/S. 302 with that u/S. 308--Not warranted by law. NLR 1999 Criminal S.C. 36. Corroboration can be gathered from the events. **PLD 2001 S.C. 333** Accused aging 16-1/2 years--Child within the meaning of Juvenile Court. **PLD 2001 Lah. 479**

Administration of justice. -- Justice is not only to be done but should be seen to have been done. Leniency not to be shown at the cost of justice. **2000 P.Cr.L.J. 1956**

Re-investigation. Spirit of Art. 18(6) of Police Order, 2002 is to discourage re-investigation. Such objectives cannot be bypassed or stultify by using device i.e. verification of the investigation etc. Departmental circular whereby reinvestigation was directed declared to be illegal and without lawful authority. **PLD 2005 Lah. 185**

Qatl-i-Amd. -- Qatl-i-Amd has three categories:--

- (i) Qatl-i-Amd which is punishable with death as Qisas;
- (ii) Qatl-i-Amd punishable with death or life imprisonment as Tazir; and
- (iii) Qatl-i-Amd punishable with 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.

Section 302 of the P.P.C. therefore, itself contemplates plainly clearly a category of cases which are within the definition of Qatl-i-Amd but for which the punishment can, under the Islamic Law, be one other than death or life imprisonment. As to what are the cases falling under clause (c) of S. 302, the law-maker has left it to the Courts to decide on a case to case basis. **PLD 1996 S.C. 274.** Qatl committed on account of Ghairat is not equivalent to qatl-i-amd, pure and simple and cannot be punishable with qisas. **1997 P.Cr.L.J. 1411** Charge of common intention to murder in pursuit of a family vendetta--Immaterial at such stage as to whose shot proved fatal. **1999 P.Cr.L.J. 9, 1995 SCMR 1765** rel.

S. 302. Qatl-i-amd. Accused involved in a case is presumed to be innocent unless proved guilty. **2010 SCMR 589 (a)** Rented confession either judicial or extra-judicial, if found truthful and confidence inspiring and also having qualified the test of vountariness, can be used for conviction without looking for any other sort of corporations. **2010 SCMR (a) 457** Leave to appeal was grnated to accused by Supreme Court to reappraise the entire evidence for safe administration of criminal justice. **2010 SCMR 566 (a)**

S. 302. Qatl-i-amd. Sentence as Tazir". Lesser punishment when commendable. Lesser of the two penalties prescribed for "qatl-i-amd is meant only for situation where the circumstances leading to murder or the manner in which the same had been committed, invoked some sympathy for the accused. **2010 SCMR (e) 660**

the marriage ceremony and then... before the Parties. Impugned evidence of death was reduced to that of life. 2009 PSC CrI. (Pak) 33(d)

Crime of Karo Kari and Siyah Kari. -- No one is to be permitted any more to take the law in his own hands on the pretext of punishing infidels. PLD 2003 Kar. 655

Abatement. -- Allegation of abetment. Pre-arrest bail allowed in murder case. 2009 P.Cr.R. (Lah) 122(b) = 2009 LN (Lah) 440 Allegation of abetment through supplementary statement. Bail allowed in murder case. 2009 P.Cr.R. (Lah) 109(b). On expiry of appellant, criminal appeal against impugned conviction/sentence stood abated. 2009 P.Cr.R. (Lah) 355. One of the convict dying--Appeal not abated. 1989 MLD 3730. Convict dying trying to escape in jail break up--Sentence of fine not abated. PLD 1987 Kar. 250. Accused/respondents were female who were only charged for instigating co-accused for abetment in commission of alleged offence. Accused/respondents being women were admitted to bail by lower Court. No exception could be taken to impugned order. Bail cancellation petition dismissed. 2009 PLR (D.I.Khan) 306(b) Judgment of the Trial Court to the extent of conviction of all accused persons had sentences awarded to three out of four accused persons was unexceptionable and called for no interference. Forth accused who was alleged to have abetted the offence with his co-conspirator, however, had been awarded sentence of death by the Trial Court which was on the harsher side, particularly as he had not directly participated in the murder of deceased, but had only abetted the offence. Sentence awarded to said accused was reduced to imprisonment for life. 2008 PCrLJ (b) 686

Abetment and bail. Role of abetment. Bail allowed in murder case. 2009 PLR (Lah) 94

Abetment and conspiracy. Statements of said persons could not be taken for granted bail regarding allegation of abetment and conspiracy levelled against petitioner. Allegation of abetment and conspiracy involved determination of question of fact and as such involvement of petitioner in case would be determined by means of evidence at trial of case. Material relied upon against petitioner as abettor or conspirator required further consideration as to whether he had in fact committed murder of deceased, especially when he was neither present at spot nor any overt act was attributed to him. Case called for further inquiry. Bail after arrest granted. 2008 P.Cr.R. (R.Pindl) 997(a)

Absence of direct evidence and bail. Involvement of petitioner by co-accused through statement under Section 161, Cr.P.C. Bail allowed. 2009 PLR (D.I.Khan) 298

Absence of specific role. Non-ascription of role. Bail allowed in murder case. KLR 2009 (SC Pak)

75 **Abconscion and bail.** Petitioner remained absconder. Bail was refused in murder case. 2008 LN (Multan) 452

Abscondence. -- People do abscond after murder whether charged rightly or wrongly. 2008 P.Cr.L.J. (Lah.) (c) 114 Abscondence by itself does not establish guilt unless corroborated by other cogent evidence. 2000 P.Cr.L.J. 2038. An important factor. 1989 P.Cr.L.J. 784. Has to be judged in circumstances of each case. 1989 MLD 4219 Long period--Can be used as corroborative piece of evidence. 1989 P.Cr.L.J. 1511, 1275--By itself not a substantive piece of evidence, 1989 P.Cr.L.J. 2289, nor sufficient for conviction. 1989 P.Cr.L.J. 2100 + PLD 1986 Pesh. 150. Not a corroboratory evidence. 1987 MLD 1287 Right of hearing forfeited. PLD 1987 Kar. 250. Accused can evade arrest on account of false implication. 1986 SCMR 982. Absconding by far weakest corroborative evidence. PLD 1977 S.C. 41. Duty of the Court to sift evidence. 1989 P.Cr.L.J. 2336 + 1987 SCMR 1. Not proved. 1989 MLD 3108. For some days per se not helpful. 1989 P.Cr.L.J. 2038. Warrant not placed on record. 1989 P.Cr.L.J. 2315. Benefit can be extended to accused even if plea not taken. PLD 1986 Lah. 382. Abscondence alone is not enough to sustain conviction. 1997 P.Cr.L.J. 961, 1453. In determining the effect of abscondence, the antecedents of the absconder, his occupational habits and limitations, period of abscondence and specific explanation for abscondence have to be considered in juxtaposition with other evidence on the record. 2003 P.Cr.L.J. 64. Abscondence alone cannot be a substitute for real evidence. 2002 P.Cr.L.J. 1914. Abscondence at the most can be taken as corroboration of the charge and not the evidence of the charge and in abscondence of any other corroborative evidence, that

304. Proof of qatl-i-amd liable to qisas, etc.-- (1) Proof of qatl-i-amd liable to qisas shall be in any of the following forms, namely:-

(a) the accused makes before a Court competent to try the offence a voluntary and true confession of the commission of the offence; or

(b) by the evidence as provided in Article 17 of the Qanun-e-Shahadat, 1984 (P.O. No. 10 of 1984).

(2) The provisions of sub-section (1) shall, *mutatis mutandis*, apply to a hurt liable to qisas.

COMMENTS

Evidence. Expression "soon before death" cannot be defined in terms of period. Incident of cruelty should not be stale. If incident ceased to disturb mental equilibrium, it will not come within the expression "soon before death". 2003(3) PCR (Cr.) 830 (SC) relied. **2004 PLR SC (India) 906(a)**

Agreement. Demand of dowry after marriage is an offence. Contention that demand of gold not make an offence unless there was agreement to this effect between the parties. Contention not tenable. It is not always necessary that there be any agreement for dowry. **2004 PLR SC (India) 906(b)**

Scope.-- Confessional statement should be accepted or rejected as a whole. **1994 SCMR 1504.** Defence version belied. **1994 MLD 331.** Two versions. **1994 P.Cr.L.J. 382.** Self-defence. **1994 SCMR 1161.** Defence plea taken under S. 342, Cr.P.C.--Not a confession. **1994 MLD 1704.** One tainted piece of evidence cannot corroborate another tainted piece of evidence. **1997 P.Cr.L.J. 71.**

Appraisal of evidence. Unimpeachable testimony of eye-witnesses including the complainant that accused fired from his pistol at the abdomen of the deceased not only consistent but also corroborated by medical evidence. Conviction u/S. 302 restored. **PLD 2004 SC 379**

Pre-requisites for qisas punishment. Pre-requisites for qisas punishments are that proofs as provided in S. 304, PPC itself with reference to either accused making confession before the trial Court or as against u/S. 17 of Qanun-e-Shahadat, 1984. **PLD 2004 Pesh. 126**

Compromise. If sentence of death to be treated as ta'zir, partial compromise would be legally inconsequential whether any statement in that regard is actually made by petitioner or not. **PLJ 2005 Cr.C. (Lah.) 62.**

Ingredients. Incident took place initially all of sudden on account of minor dispute of electric connection and thereafter deceased was inflicted injuries by accused and his acquitted co-accused with their weapon of offence. High Court erred in law to convict the accused u/S. 324 of PPC. Ingredients of unamended Section 304(2), PPC were attracted in all force in the case. Accused was convicted u/S. 304(2) PPC and sentenced to seven years without compensation as the accused had already paid the compensation to the legal heirs of deceased as awarded by trial Court and upheld by High Court. Appeal allowed. **PLJ 2008 SC (g) 197**

305. Wali.--In case of a qatl, the wali shall be-

(a) the heirs of the victim, according to his personal law ¹¹¹[but shall not include the accused or the convict in case of qatl-i-amd if committed in the name or on the pretext of honour]; and

(b) the Government, if there is no heir.

306. **Qatl-i-amd not liable to qisas.**-- Qatl-i-amd shall not be liable to qisas in the following cases, namely:-

- (a) When an offender is a minor or insane:
Provided that, where a person liable to qisas associates with himself in the commission of the offence a person not liable to qisas with the intention of saving himself from qisas, he shall not be exempted from qisas;
- (b) when an offender causes death of his child or grandchild, how low-so-ever; and
- (c) when any wali of the victim is a direct descendant, how low-so-ever, of the offender.

COMMENTS

Nothing existed on record which could even remotely indicate possibility of substitution of the appellant with the actual offender. Ocular testimony, as found by two Courts, inspired confidence and the impugned judgment was, therefore, not open to any exception. Appeal dismissed. 2005 PSC (Crl.) 915

Provisions of S. 306, PPC provide only that Qisas shall not be enforced on an offender whose descendants were Wali of the deceased persons. 2006 SCMR 204

Husband killing his wife.-- Qatl-i-amd--Husband killing his wife leaving behind his minor daughter--Not liable to Qisas. PLD 1994 S.C. 885

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

- (a) when the offender dies before the enforcement of qisas;
- (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
- (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.

¹¹²[(2) To satisfy itself that the wali has waived the right of qisas under section 309 or compounded the right of qisas under section 310 voluntarily and without duress the Court shall take down the statement of the wali and such other persons as it may deem necessary on oath and record on opinion that it is satisfied that the waiver or, as the case may be, the composition was voluntary and not the result of any duress.]

Illustrations

- (i) A kills Z the maternal uncle of his son B. Z has no other wali except D the wife of A. D has the right of qisas from A. But if D dies, the right of qisas shall devolve on her son B who is also the son of the offender A. B cannot claim qisas against his father. Therefore, the qisas cannot be enforced.

(ii) B kills Z, the brother of her husband A. Z has no heir except A. Heir A can claim qisas from his wife B. But if A dies, the right of qisas shall devolve on his son D who is also son of B, the qisas cannot be enforced against B.

COMMENTS

Scope.-- Section 307, PPC read with S. 308, PPC can only apply in a conviction recorded u/S. 302(a), PPC and not under S. 302(b), PPC. 2004 YLR (Lah) 2352(b) Provisions of Ss. 306, 307 and 308, PPC would only attract in the case of qatl-i-amd liable to qisas under S. 302(a), PPC and not in the case in which sentence for qatl-i-amd has been awarded as tazir u/S. 302(b) and (c), PPC. 2003 SCMR 855

More than one walis.-- Victim having more than one walis, any one of them can waive his right of Qisas. Wali who does not waive his right is entitled to his share of Diyat. PLJ 1993 (Cr.) Lah. 60. Where an offence is not liable to Qisas and is thus liable to payment of Diyat, accused cannot let off but can be punished with imprisonment by way of tazir. PLJ 1983 (Cr.) Lah. 60. Bald solitary statement of complainant not getting support from record--Case not free from doubt. NLR 1994 Cr. 715. Suo motu revisional jurisdiction. 1994 P.Cr.L.J. 858. Decision of criminal cases on oath on Holy Quran barred by Art. 163(3), Qanun-e-Shahadat Order, 1984. PLD 1996 Lah. 452.

Appreciation of evidence.-- Accused facing protracted trial ranging over more than 13 years--Sufficient punishment--Sentence reduced. 2000 P.Cr.L.J. 169. Disbelief of ocular evidence in respect of some of the accused cannot lead for discarding the entire evidence--Grain has to be sifted from the chaff. 2000 P.Cr.L.J. 1484. All injuries on legs of the injured intention to kill not certain. However, intention to cripple evident case u/S. 325, PPC. 2000 P.Cr.L.J. 1287 When the testimony of eye-witnesses is doubtful, prosecution case as a whole would become doubtful. 2005 P.Cr.L.J. 415

Medical evidence. Medical evidence in every case would not be considered as conclusive proof of offence. 2005 P.Cr.L.J. 415

308. Punishment in qatl-i-amd not liable to qisas, etc.-- (1) Where an offender guilty of Qatl-i-amd is not liable to qisas under section 306 or the qisas is not enforceable under clause (c) of section 307, he shall be liable to diyat:

Provided that, where the offender is minor or insane, diyat shall be payable either from his property or by such person as may be determined by the Court:

Provided further that where at the time of committing of qatl-i-amd the offender being a minor, had attained sufficient maturity or being insane, had a lucid interval, so as to be able to realise the consequences of his act, he may also be punished with imprisonment of either description for term which may extend to ¹¹³[twenty-five years] as ta'zir:

Provided further that where the qisas is not enforceable under clause (c) of section 307 the offender shall be liable to diyat only if there is any wali other than offender and if there is no wali other than the offender, he shall be punished with imprisonment of either description for a term which may extend to ¹¹⁴[twenty-five years] as ta'zir.

(2) Notwithstanding anything contained in sub-section (1), the Court having regard to the facts and circumstances of the case in addition to the punishment of diyat, may punish the offender with imprisonment of either description for a term which may extend to ¹¹⁵[twenty-five years], as ta'zir.

113. Subs. for words "fourteen years" by the Criminal Law (Amdt.) Act, 2004 (I of 2005) dt. 10.1.2005.
 114. Subs. for words "fourteen years" by the Criminal Law (Amdt.) Act, 2004 (I of 2005) dt. 10.1.2005.
 115. Subs. for words "fourteen years" by the Criminal Law (Amdt.) Act, 2004 (I of 2005) dt. 10.1.2005.

COMMENTS

Benefit of doubt. Benefit of doubt and accused was acquitted of the charge of murder. **KLR 2009 Cr.C. (R.Pindi) 175(b) = 2009 P.Cr.R. (R.Pindi) 580(b)**

Plea of minority. Mere on statement under Section 342, Cr.P.C. mentioning of accused to be juvenile is not sufficient to take benefit qua quantum of impugned sentence. **2009 PSC CrI. (SC Pak) 168(b)**

Qatl-i-Amd.-- Qatl-i-amd committed by the husband of his wife leaving behind child--Not liable to Qisas. **PLD 1994 S.C. 885** Provisions of S. 308 would be automatically attracted in case where accused is found guilty of qatl-i-amd u/S. 302, is not liable to qisas as provided in S. 306 or qisas is not enforceable as provided u/S. 307(c). **NLR 1999 Cr. S.C. 36.** Vindication of family honour can be treated as an extenuating and mitigating circumstance in favour of offender. **2000 P.Cr.L.J. 139.** Accused and deceased husband and wife. Dispute over setting of marriage of their children. Compromise arrived at between accused and all legal heirs of deceased including parents of deceased and her two major sons without any duress or coercion. Grand parents of four minor children being their guardian waived their right of qisas and pardoned the accused. Payment of diyat amount set aside. **2002 P.Cr.L.J. 1256.** Punishment in qatl-i-amd not liable to qisas, determination of age and mixed question of law and fact for the purpose of the Penal Code. It is to be first established that the accused was minor and then to ask for concession as provided u/Ss. 306 and 308, PPC. **2003 YLR 380**

Third proviso.-- Third proviso cannot be detached and read independently, but has to be interpreted in the light of main provision of S. 308 as a whole. **2003 YLR 263.**

309. Waiver-Afw 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:

Provided that the right of qisas shall not be waived--

- (a) where the Government is the wali; or
- (b) where the right of qisas vests in a minor or insane.

(2) Where a victim has more than one wali, any one of them may waive his right of qisas:

Provided that the wali who does not waive the right of qisas shall be entitled to his share of diyat.

(3) Where there are more than one victim, the waiver of the right of qisas by the wali of one victim shall not affect the right of qisas of the wali of the other victim.

(4) Where there are more than one offenders, the waiver of the right of qisas against one offender shall not affect the right of qisas against the other offender.

COMMENTS

Qisas.-- Minor cannot be compelled under this section to waive right of this Qisas through his guardian. **NLR 1993 Cr. Quetta 56** Compromise in Hudood cases--Not allowable unless done before the matter is reported to the Court. **PLD 1996 Quetta 56** Acquittal is not an automatic consequence of the compounding of the offence of qatl-e-amd by the heirs of the deceased. In the event of such a compromise the accused can claim only non-exacting of the qisas and he can be acquitted only if the Court permits the compounding of the offence. **2002 P.Cr.L.J. 401** Provisions of Ss. 309(1) & (2) & 310(1), PPC, would apply to cases where punishment is recorded as Qisas and not as Ta'zir and as such Afw of Qisas and compounding of Qisas in cases of Qatl would apply only where conviction had been recorded u/S. 302, PPC and not to cases where conviction and sentence had been recorded u/S. 302,

PPC & not to cases where conviction and sentence had been recorded u/S 302(1), PPC 2005 YLa 1163

Section 345(5)(a), Cr.P.C. Accused during pendency of appeal moving an application u/S 345(5)(a), Cr.P.C., seeking of her acquittal on the basis of compromise arrived at between her and legal heirs of deceased. One of the legal heirs stated to be missing for the last ten years, law would presumed missing legal heirs to be not alive, compromise having been arrived between parties without any duress and coercion, being genuine would promote harmony and peace amongst parties allowed. Holding missing legal heirs of deceased if subsequently appeared and not waiving is right of Qisas he would be entitled to share of Diyat as provided in proviso to S. (2) of S. 309, PPC PLD 2005 Lah. 174

Waiver or compounding of offence--Guidelines:

- (i) In case of qatl-e-Amd; if the right of qisas is waived without any compensation, or compromise is arrived at between the parties, the application for permission to compound the offence shall be made under S. 310, P.P.C.
- (ii) In case of Qatl-e-Amd, if the right of qisas is waived without any compensation or the legal heirs of the deceased compound their right of qisas within the meaning of S. 309 and 310, P.P.C. during the pendency of appeal, applications for permission to compound the offence shall be made under S. 310, P.P.C.
- (iii) Under S. 338-E(1), P.P.C., subject to the provisions of Chapter XLV and S. 345 of the Cr.P.C. all offences under Chapter XLV, P.P.C relating to homicide and hurt may be waived or compounded and the provisions of Ss 309 and 310, P.P.C. shall, mutatis mutandis, apply to the waiver or compounding of such offence.
- (iv) If a question arises as to whether any person is or is not the legal heir of the deceased, such question shall be determined by the Court competent to receive application on the basis of waiver or compromise between the parties.
- (v) For the purpose of determination of questions relating to the waiver of compounding of an offence, the accused and the legal heirs of the deceased shall be treated parties to the proceedings under S. 338-E(1), P.P.C. PLD 1997 S.C. 178
- (vi) Person committing homicide is excluded from inheriting the property of the victim. 1997 P.Cr.L.J. 247
- (vii) Despite compromise Court has discretion to punish the accused. PLD 1997 Quetta 17.
- (viii) Courts not suppose to make inference. 2000 P.Cr.L.J. 1235

Right of Wali to waive qisas.-- An adult sane Wali has a right to waive the right of qisas and to retain his right of receiving diyat or he may the right of qisas as well as diyat, if so, the offender is to be acquitted of the charge. However, if he merely waives the right of qisas, the offender is liable to be convicted and liable to pay compensation by way of diyat or payment of badl-i-sulh. PLD 2003 Kar. 127.

Tazir.-- Tazir can be awarded after accepting compromise. PLD 2003 Kar. 127.

Compromise. One of the legal heir missing for the last 10/11 years. Compromise however effected by all the legal heirs except the missing one. Compromise allowed, however, missing heir is subsequently appears and does not waive his right of qisas would be entitled to his share of diyat as provided in proviso to sub-section (2) of S. 309, PPC. PLD 2005 Lah. 174.

The question whether the petitioner and his co-accused were sitting at the spot armed with fire-arms with intention to commit dacoity needed further inquiry and as such the case of the petitioner squarely covered by sub-section (2) of S. 497, Cr. P.C. Bail allowed. KLR 1994 Cr.C. 56

Father of deceased and other heirs forgiving in the name of Almighty. Conviction set aside. Appellant acquitted of the charge. Attach. Petition converted into appeal and allowed. 1994 PSC (Cri.) SC (Pak) 212

310. Compounding of qisas (Sulh) in qatl-i-amd.—(1) In the case of qatl-i-amd, and adult sane wali may, at any time on accepting badal-i-sulh, compound high right of qisas:

- ²[Provided that a female shall not be given in marriage or otherwise in badal-i-sulh.]
- (2) Where a wali is a minor or an insane, the wali of such minor or insane wali may compound the right of qisas on behalf of such minor or insane wali:
- (3) Provided that the value of badal-i-sulh shall not be less than the value of dyiat.
- (4) Where the Government is the wali, it may compound the right of qisas; Provided that the value of badal-i-sulh shall not be less than the value of diyat.
- (5) Where the badal-i-sulh is not determined or is a property or a right the value of which cannot be determined in terms of money under Shariah the right of qisas shall be deemed to have been compounded and the offender shall be liable to diyat.

(5) Badal-i-sulh may be paid or given on demand or on a deferred date as may be agreed upon between the offender and the wali.

Explanation.—In this section Badal-i-sulh means the mutually agreed compensation according to Shariah to be paid or given by the offender to a wali in cash or in kind or in the form of movable or immovable property.

COMMENTS

Having examined the said legal heirs and having considered all other aspects of the matter, Session Judge concerned was of the view that the compromise in-question was genuine and voluntary. Petitioners are acquitted of charge leveled against them on account of the compromise between parties. Criminal Misc accepted. **2005 PSC (Cri.) 507**

Trial Court while acquitting co-accused convicted and sentenced appellant to death on the said charge of murdering deceased father of complainant with further direction to pay stipulated amount in High Court. Validly. No description of thieves or the one who had fired at the deceased had been given in the FIR. Accused were identified during identification parade sixteen days after their arrest. PW who conducted identification parade did not record statement of any of the PWs or of the accused prior to holding of identification parade or after it was held. Said PW had mixed three accused with eighteen inmates of house in violation rule of mixing nine or ten strangers with one accused. Prosecution had failed to prove its case against appellant/accused beyond any doubt. Impugned conviction/sentence sent aside. Criminal appeal allowed. **2005 P.Cr.R. (B.Pur) 1309(a)**

Compounding of offence.—Compounding of Qisas and offence—Two separate terms. **1992 P.Cr.L.J. 1960**. Applicable in those cases where no right of Qisas waived. **1992 P.Cr.L.J. 1960**. Punishment of Tazir after waiver or compounding of right of Qisas. Can be awarded. **PLD 1992 Pesh 176**. Question of waiver or compounding only arise after the accused is proved guilty. **PLD 1992 Pesh. 187** No retrospective. **PLD 1992 Pesh. 187** Scope **PLJ 1994 Cr. C. 207**.

³[**310-A. Punishment for giving a female in marriage or otherwise in badal-i-sulh, wanni or swara.**—Whoever gives a female in marriage or otherwise compels her to enter into marriage, as badal-e-sulh, wanni, or swara or any other custom or practice under any name, in consideration of settling a civil dispute or a criminal liability, shall be punished with imprisonment of either description for a term which may extend to seven years but shall not be less than three years and shall also be liable to fine of five hundred thousand rupees."]

311. Ta'zir after waiver or compounding of right of qisas in qatl-amd.— Notwithstanding anything contained in section 309 or section 310 ⁴[where all the wallis do not waive or compound the right of qisas or ⁵[if] the principle of fisad-fil-arz ⁶[is attracted] the Court may, ⁷[xxxxxx] 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 ⁸[death or imprisonment for life or] imprisonment of either description for a term which may extend to ⁹fourteen] years as ta'zir:

Provided that if the offence has been committed in the name or on the pretext of honour, the imprisonment shall not be less than ten years.]

¹⁰[**Explanation.** For the purpose subs. By se of this section, the expression fasad-fil-arz shall include the past conduct of the offender, or whether he has any previous convictions, or the brutal or shocking manner in which the offence has been committed with is outrageous to the public conscience, or if the offender is considered a potential danger to the community ¹¹[, or if the offence has been committed in the name or on the pretext of honour.]

COMMENTS

Scope.— Provision attracted only when Court declines the permission for compounding offence under Section 345, Cr.P.C. 1992 MLD 1590 Provision not to be revoked in case before commencement of Criminal Law Amendment Ordinance, 1990. 1992 MLD 2368 Partial compromise. Sentence may be awarded under S. 311, PPC. 1994 P.Cr.L.J. 1587 Court can award punishment by way of Tazir even after having accepted compromise. PLD 1996 Quetta 56 Section 311, PPC not compoundable. PLD 1997 Quetta 17. Accused killing his sister in a brutal manner, such act to be read in conjunction with his being a habitual or professional criminal. Accused cannot be termed as Fisad-fil-Arz by any stretch of imagination. 2000 P.Cr.L.J. 1116 Section 11, PPC having direct nexus with S. 302, PPC, charge could not have been framed after the acquittal of the accused in the main murder case under this section. 2004 P.Cr.L.J 598

Application.— Section 311 applicable in cases where there is no compromise regarding the case as a whole and only right of qisas waived u/S. 309, PPC or there is a compounding right of qisas u/S. 310 PPC. 2001 P.Cr.L.J. 64.

Construction.— Court should not act and insist upon the strict phrases of provisions of law relating to discretion which could bring some unpleasant result in future. 2001 P.Cr.L.J. 1636

Fisad-fil-Arz.— Term denotes only those persons who fall within the ambit and cannot be convicted and punished under the Section. 2000 P.Cr.L.J. 1116 Some of legal heirs not compounding Court to keep in view the principle of Fisad-fil-Arz which include conduct of officer being previous convict. PLD 2001 Pesh 58

Appeal to H.C. against conviction and sentence of life imprisonment awarded by Trial Court. Parents of deceased waiving their right of qisas but widow with three minor daughters of deceased refusing to waive right of qisas. H.C. finding that appellants had brutally murdered his real brother living with him and did not deserve any leniency in matter of sentence. High Court converting

⁴ As notified by Ord. XCIX of 1995.

⁵ Subs. For the words "keeping in view" by the Criminal Law (Amdt.) Act, 2004, (I of 2005) dt. 10.1.2005.

⁶ Words inst. By the Criminal Law (Amdt.) Act, 2004, (I of 2005) dt. 10.1.2005.

⁷ Omitted the words "in its discretion" by the Criminal Law (Amdt.) Act, 2004, (I of 2005) dt. 10.1.2005.

⁸ Words inst. By the Criminal Law (Amdt.) Act, 2004, (I of 2005) dt. 10.1.2005.

⁹ As notified by Ord. XCIX of 1995.

¹⁰ As subs. By Act II of 1997.

¹¹ Words inst. By the Criminal Law (Amdt.) Act, 2004, (I of 2005) dt. 10.1.2005.

conviction/sentence of life imprisonment under S. 311 and enhancing compensation of Rs. 50,000/- awarded by Trial Court to amount equal to diyat amounting to Rs. 2,69,176. NLR 2001 Cri. Pesh. 225

312. Qatl-i-amd after waiver or compounding of qisas.-- Where a wali under section 309 or compounded under section 310 such wali shall be punished with--

- (a) qisas, if he had himself waived or compounded the right of qisas against the convict or had knowledge of such waiver or composition by another wali; or
- (b) diyat, if he had no knowledge of such waiver or composition.

313. Right of qisas in qatl-i-amd.-- (1) Where there is only one wali, he alone has the right of qisas in qatl-i-amd but, if there are more than one, the right of qisas vests in each of them.

- (2) If the victim--
 - (a) has no wali the Government shall have the right of qisas; or
 - (b) has no wali other than a minor or insane or one of the wali is a minor or insane, the father or if he is not alive the paternal grandfather of such wali shall have the right of qisas on his behalf:

Provided that, if the minor or in sane wali has no father or paternal grandfather, how high-so-ever, alive and no guardian has been appointed by the Court, the Government shall have the right of qisas on his behalf.

314. Execution of qisas in qatl-i-amd.-- (1) Qisas in qatl-i-amd shall be executed by a functionary of the Government by causing death of the convict as the Court may direct.

- (2) Qisas shall not be executed until all the wali are present at the time of execution, either personally or through their representatives authorised by them in writing in this behalf:

Provided that where a wali or his representative fails to present himself on the date, time and place of execution of qisas after having been informed of the date, time and place as certified by the Court, an officer authorised by the Court, shall give permission for the execution of qisas and the Government shall cause execution of qisas in the absence of such wali.

- (3) If the convict is a woman who is pregnant, the Court may, in consultation with an authorised medical officer, postpone the execution of qisas upto a period of two years after the birth of the child and during this period she may be released on bail on furnishing of security to the satisfaction of the Court or, if she is not so released she shall be dealt with as if sentenced to simple imprisonment.

COMMENT

Qisas--Execution of.-- Qisas is to be executed by a functionary of the Government required under S. 314, P.P.C. PLD 1996 S.C. 1

315. Qatl shibh-i-amd.-- Whoever, with intent to cause harm to the body of a person causes the death of that or of any other person by means of an ordinary course of nature is not likely to cause death