Form No: HCJD/C

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Case No: Criminal Appeal No.93 of 2014

Hukam Khan
Vs.
The State and another

Appellant by:	Raja Rizwan Abbasi, Advocate.
Respondents by:	Raja Khalid Mehmood Khan, Deputy Attorney-General. Mr. Daniyal Hassan, State Counsel.

Date of Decision: **12.08.2021**

AAMER FAROOQ, J.- Through the instant criminal appeal, the appellant Hukam Khan son of Aziz Khan, has assailed the judgment dated 01.10.2014 passed by the learned Additional Sessions Judge (VII), West, Islamabad in Sessions Case No.08/2013, (re: *The State V/s Hukam Khan*) culminating from FIR No.76/2013 dated 06.03.2013 registered at Police Station Sabzi Mandi, Islamabad for the offence under Sections 302 & 34 P.P.C. whereby the trial Court has convicted the appellant under Section 302 (b) P.P.C. and sentenced him to undergo life imprisonment for the murder of deceased Zakir Hussain by extending benefit of Section 382-B Cr.P.C.

2. During the pendency of appeal the appellant expired and the legal heirs of the appellant appeared and submitted that due to death of the appellant the proceedings in the appeal are not abated and they have *locus standi* to press the appeal as their civil rights are involved. This Court vide order dated 22.01.2020 after hearing both the parties decided to hear the appeal on merits which is as under:

"*The legal question, which has arisen in this appeal, is that Hukam Khan, the appellant, was convicted in case FIR No.76 dated 06.03.2013 under sections 302/34 PPC registered at P.S. Sabzi Mandi, Islamabad and was awarded life imprisonment; he after filing of appeal, passed away, hence the question is, whether or not, instant appeal has abated.*

2. Learned counsel for legal heirs of the appellant submits that appeal has not abated inasmuch as the conviction of appellant has consequences as monetary/pensionary benefits are to be awarded to him. It was submitted that under section 431 Cr.P.C., position is that death of the accused or the convict abates the appeal but where there is sentence of penalty as well, it does not. It was submitted that there is case law that where even there are monetary benefits, including the pensionary benefits, the appeal does not abate. Reliance was placed on cases reported as 'Faiz Muhammad Jaffar and others Vs. The State through NAB, Quetta and others' (PLD 2012 Balochistan 164), 'Muhammad Arshad Vs. The State and Another' (2018 P Cr.LJ 1513) and 'S.M. Vidya Devi Vs. State' (1957 Allahabad 20).

3. This Court had requested Raja Khalid Mahmood Khan, learned Deputy Attorney General for Pakistan to assist the Court in the matter and he affirmed the arguments addressed by learned counsel for the appellant and relied upon case law reported as 'Muhammad Zamurd Vs. Chairman, National Accountability Bureau through Deputy Prosecutor-General, Peshawar' (2013 P. Cr.LJ 161), 'Aamir and others Vs. The State' (1992 P.Cr.LJ 1134), 'Muhammad Saleem Vs. The State' (PLD 2011 Quetta 40), 'Muhammad Arshad Vs. The State and Another' (2018 P. Cr.LJ 1513), 'Ahmad Nawaz and Another Vs. The State' (2011 SCMR 593) and 'Anwar Hossain Khan Vs. The State' (1970 P.Cr.LJ 279).

4. Arguments advanced by learned counsels for the parties have been heard.

5. In case titled 'Muhammad Saleem Vs. The State' (PLD 2011 Quetta 40), the Hon'ble Baluchistan High Court observed as follows:-

> *"I have heard the learned counsel for the parties and have gone through the record. Ordinarily, a criminal appeal abates on the death of an appellant, but section 431, Cr.P.C. provides an exception to this general rule. It says that an appeal against a sentence of fine shall not abate by reason of death of an appellant, because it is not a matter, which affects his person, it would certainly affect his estate. Thus, upon death of an appellant, his appeal to the extent of a portion of sentence of an imprisonment, abates, whereas, the appeal to the extent of sentence of fine, affecting the property of an appellant, shall not abate.*

Moreover, a sentence awarded to a Government official or employee would certainly affect his service. In such an eventuality, his conviction would also affect his pensionary benefits. Thus, on this score as well, the appeal does not abate. In the present case, the amount of fine has been ordered to be recovered from the properties of the appellant, besides the fact that, he was a Government employee, therefore, his conviction and sentence would certainly have an impact not only upon his estate, but also upon his pensionary benefits. Hence, in the circumstances, his appeal on his death does not abate. In this behalf, I have been fortified by a judgment in case titled Anwar Hussain Khan Vs. The State reported in 1970 P.Cr.LJ279. Relevant portion of which is reproduced here-in-below: -

"Ordinarily a criminal appeal abates on the death of the appellant. But section 431, Cr.P.C. seems to have made an exception to this general rule. A careful perusal of the section will show that an appeal against a sentence of fine shall not abate by reason of the death of the accused-appellant, because it is not a matter which affects his person, but one which affects his estate. Where an accused has repeated against the sentence of imprisonment and fine and before the appeal comes for hearing he dies, that part of the appeal which relates to the sentence of imprisonment shall abate on the death of the appellant but the, other part which relates to the sentence of fine shall not abate on the death of the appellant. The view receives support from the cases AIR 1957 All. 20=58 Cr.LJ 16 and AIR 1962 Mys. 275.

If the appeal against a sentence of fine does not abate then the appellant Court may look into the propriety and legality of the sentence of fine imposed upon the accused and set aside the said fine or remit it in fit cases; in consideration of the hardship and surrounding facts and circumstances of the case".

6. In view of above position of law, the consequence of abatement of appeal is to be decided at the time of final adjudication of the matter. In case, the conviction is to be confirmed, appeal would formally abate, as the sentence can only be served upon the accused/convict, however, if the appeal is to be accepted and the conviction is to be set aside, the appeal would be decided on merits, as it has consequences for the legal heirs of the deceased.

7. In view of above position of law, I am inclined to hear the appeal on merits. Learned counsel, representing the legal

heirs of appellant, shall file list of heirs and also the details of pensionary or other monetary benefits involved.
8. Now to come up for arguments on merits."

3. During the course of proceedings on 18.02.2021 learned counsel for the appellant apprised the Court that a compromise has been affected between the legal heirs of the deceased Zakir Hussain and the appellant. In pursuance of which the appellant through an application (C.M. No.66/2021) placed on record documents pertaining to compromise i.e. affidavits executed by Gulfaraz Khan (father of deceased Zakir Hussain) and Mst. Razia (mother of deceased Zakir Hussain). This Court vide order dated 26.02.2021 directed the Sessions Judge (West), Islamabad to hold an inquiry with regard to the genuineness of the compromise arrived at between the parties.

4. In compliance of order dated 26.02.2021, Sessions Judge, (West) Islamabad after completing all the required formalities submitted his report dated 10.06.2021.

5. The Sessions Judge called the reports from the S.H.O. P.S. Sabzi Mandi with regard to the status of the legal heirs of deceased namely Zakir Hussain. The S.H.O has reported that Zakir Hussain (deceased) is survived Gulfaraz Khan (father), Mst. Razia (mother), Altaf Hussain (brother), Aamir Hussain (brother), Nadia Bibi (sister) and Sidra bibi (sister). The report also told that the father and mother of the deceased got recorded their statements and they, in specific words, have stated that they have forgiven the convict/ appellant Hukam Khan and waived off their right of Qisas in the name of Almighty Allah without receipt of any compensation. Both legal heirs have stated that

they have no objection for acquittal of convict/appellant from this case. The report also mentioned that on Court's question, the legal heirs replied that there was no pressure on them for this compromise. Status/list of all the legal heirs of deceased Zakir Hussain was also verified by Ahmed Munir, General councilor, VC Kalu Dher, UC Turlandi, District Swabi.

6. Learned counsel for the appellant contended that the deceased Zakir Hussain was unmarried and therefore left only his father and mother as the sole legal heirs; consequently, only their statements have been recorded and their affidavits have been appended. Appellant's brothers and sisters do not fall within the domain of his legal heirs, hence there was no need to record their statements regarding compromise. It was also contended that the legal heirs i.e. father and mother of the deceased have waived their right of Qisas in the name of Almighty Allah and have excused the appellant with their free-will and consent without any inducement or pressure and compromise arrived at between the parties, is genuine, therefore, the appeal merits acceptance.

7. Learned Deputy Attorney-General and the State Counsel have raised no objection to the compromise between the parties, in view of the report submitted by Sessions Court, Islamabad which meets all necessary legal requirements in order to give effect to the compromise agreement.

8. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

9. Record reflects that Sessions Court has called the legal heirs of deceased Zakir Hussain namely Gulfaraz Khan (father) and Mst. Razia (mother) and recorded their statements, who stated in their statements that they have forgiven Hukam Khan convict/appellant by waiving their right of Qisas in the name of Almighty Allah without receipt of any compensation; that they have no objection to acquittal of the appellant from this case; that they have already tendered their sworn affidavits regarding compromise; that they have entered into compromise with their free will and consent.

10. After considering all aspects of the case, this Court is of the view that the legal heirs of the deceased are competent to compound/compromise the offence with the appellant. The compromise affected between the parties on the very face of it appears to be genuine and true, without any due inducement or pressure. Considering the genuineness of the compromise, this Court feels no hesitation to accept the same as the offence punishable under Section 302 PPC against the appellant is compoundable.

11. Keeping in view the above facts, the compromise arrived at between the parties is hereby accepted; consequently, the instant appeal is allowed and the impugned judgment dated 01.10.20214 is set-aside to the extent of the appellant. Appellant Hukam Khan S/o Aziz Khan is hereby acquitted of the charges levelled against him in the abovementioned FIR.

(AAMER FAROOQ)
JUDGE

Approved for reporting

M.Naveed