

# Compounding of Offence/ Compromise

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## COMPROMISE IN ATA CASES....NOT COMPOUNDABLE

S. 345---Anti-Terrorism Act (XXVII of 1997), S.7---Acts of terrorism---Death sentence, award of -  
--compounding of offence under S.7 of Anti-Terrorism Act, 1997---Scope---Compromise  
between convict and legal heirs of deceased---Effect---Death sentence under S.7 of Anti-  
Terrorism Act, 1997 had its own implications and was not compoundable under Ss.354(5) & (7),  
Cr.P.C---Illustration..(2014 PLD 383 SUPREME-COURT) MUHAMMAD NAWAZ Vs State

## COMPROMISE IN RAPE CASES....NOT COMPOUNDABLE

Ss. 375 & 376---Criminal Procedure Code (V of 1898), S. 345---of fence of rape,  
compounding of ---Legality---of fence of rape under S.376, P.P.C. was not compoundable.(2013  
SCMR 203 SUPREME-COURT) SALMAN AKRAM RAJA Vs GOVERNMENT OF PUNJAB  
through Chief Secretary

## DURING PENDENCY OF APPEAL

Ss. 302 & 311---Criminal Procedure Code (V of 1898), S. 345---Qatl-e-amd.....  
compromise can be effected during pendency of Appeal....(2014 SCMR 1155 SUPREME-  
COURT) IQRAR HUSSAIN vs State, ( 2011 SCMR 1964 SUPREME-COURT) ALI  
MUHAMMADVs State

## *Ss. 309, 310 & 338-E.... Guidelines for subordinate courts & citizen for Waiver or compounding of offences*

(2012 PLD 277 KARACHI-HIGH-COURT-SINDH)

## *Right of successors of a legal heir to enter into a compromise for purpose of compounding the offence*

S. 345---Penal Code (XLV of 1860), S. 302(b)---Qatl-e-amd---compounding of offence---  
Compromise by legal heirs of deceased---Right of successors of a legal heir to enter into a  
compromise for purpose of compounding the offence---Scope---Question as to whether  
successors of a legal heir of deceased were equally competent to enter into a compromise with  
the convict---Trial Court convicted convict in question under S.302(b), P.P.C. and sentenced  
him to death---Death sentence of convict was confirmed by High Court and also by the Supreme  
Court---Deceased at the time was survived by five legal heirs, her mother and four uncles---  
Mother and three uncles of deceased compromised with the convict and waived their right of  
Qisas, however one of the uncles (legal heir) refused to forgive the convict and remained  
adamant not to do so even till the time of his death---After death of said legal heir, his  
successors however compromised with the convict, where after an application was moved  
before Trial Court for effecting a compromise, but same was dismissed on the basis that one of

the legal heirs in his life time refused to forgive the convict---High Court also upheld order of Trial Court with the observation that despite subsequent compromise with successors of legal heir, who had not forgiven the convict in his lifetime, application for compromise was liable to be dismissed---Validity---Not only the surviving legal heirs of the victim had legal authority to waive right of Qisas and compound the offence with the convict upon payment of compensation of Diyat or without payment in lieu of pleasure of God, but such right was equally inheritable by the successors of any legal heir of the victim, who during life time had either not entered into compromise with the convict or refused to enter into such compromise, as despite his earlier refusal such legal heir was competent to change his mind and subsequently enter into compromise with the convict---Principle of estoppel would not be attracted in such a situation to debar successors of such a legal heir from exercising their right to compromise independently at their own free will---Appeal was disposed of accordingly. (2013 SCMR 1281 SUPREME-COURT) ABDUL RASHID alias TEDDI Vs State

#### LEAVE OF THE COURT....345(5) CrPC

S. 345(5)---compounding of offence---Expression 'leave of the Court'-----Object requiring leave from the Court as per clear intention of legislature is neither meaningless nor purposeless and it cannot be construed that while considering compromise plea, even of a compromise which is lawfully entered, by free consent of legal heirs, the Court should act in mechanical manner and allow the same as a matter of course or routine; should sit as a silent spectator or to conduct as a post office simpliciter and affix a judicial stamp upon it; rather it is the duty and prerogative of the Court to determine fitness of case for endorsement and sanction of compromise---In appropriate cases, where compromiser and offender is directly or indirectly beneficiary of crime; the offence is committed or is caused thereof, for an obvious object of grabbing the property of deceased by compromiser, through his offspring who may ultimately benefits himself (the offender) as well, the Court may refuse to give an effect to such a deal, specially coupled with scenario when offence is gruesome, brutal, cruel, appalling, odious, gross and repulsive which causes terror and sensation in the society. ( 2010 PLD 938 SUPREME-COURT ) NASEEM AKHTAR vs State

S. 345(5)---Constitution of Pakistan (1973), Art.185(3)---compounding of offence---Petition for leave to appeal---Expressions 'an appeal is pending' and 'the court'---Scope---Expressions 'an appeal is pending' and 'the court' appearing in S.345(5) Cr.P.C. for all intents and purposes of law also mean the petition for leave pending before Supreme Court. (2010 PLD 938 SUPREME-COURT ) NASEEM AKHTAR Vs State

Supreme Court declined to grant leave to compromise the offence---Leave to appeal was refused. (2010 PLD 938 SUPREME-COURT ) NASEEM AKHTAR Vs State

#### EFFECT OF ACQUITTAL BY COMPROMISE

S. 310(5)---Criminal Procedure Code (V of 1898), S.345---compounding of offence of murder---Admission of guilt---*compounding of an offence does not amount to admission of guilt on the part of accused person or that an acquittal earned through such compounding of an offence may not have ramification regarding all spheres of activity of acquitted person's life,*

*including his service or employment, beyond criminal case against him.* (2010 PLD 695 SUPREME-COURT ) CHAIRMAN AGRICULTURAL DEVELOPMENT BANK OF PAKISTAN Vs MUMTAZ KHAN

Ultimate acquittal in a criminal case exonerates accused person completely for all future purposes vis-a-vis the criminal charge against him---Concept of *autrefois acquit* embodied in S. 403, Cr.P.C., protection guaranteed by Art.13(a) of the Constitution, *Afw* (waiver) or *Sulh* (compounding ) in respect of an offence has the effect of purging the offender of the crime. (2010 PLD 695 SUPREME-COURT ) CHAIRMAN AGRICULTURAL DEVELOPMENT BANK OF PAKISTAN Vs MUMTAZ KHAN

#### COMPROMISE AT BAIL STAGE

S.345(2)---Penal Code (XLV of 1860), S.337-F(i)/337-L (2)/34 causing of hurt "*Ghyr-Jaifah*" etc.---compromise at bail stage invalid at trial---Compromise effected at bail stage when prosecution of the offence was not pending before Trial Court, cannot be made basis for acquittal of accused, as under S.345(2), Cr.P.C. Trial Court had to satisfy itself and grant permission to compound the offence being tried by it. (2012 YLR 791 LAHORE-HIGH-COURT-LAHORE )

Ss. 452/447/429/506-B/511/148/149--Criminal Procedure Code (V of 1898), Ss.345, 249-A & 417(2A)---House- trespass, mischief, criminal intimidation and attempt to commit of fences punishable with imprisonment for life or a shorter term---Appeal against acquittal---Complainant, at bail stage, had an affidavit in favour of accused stating that they had entered into compromise---Contents of said affidavit, transpired that said compromise was merely for grant of concession of bail to the accused and it did not bear any reference with regard to compounding of offence with accused---Keeping in view the provisions of S.345, Cr.P.C., it was incumbent upon the Trial Court to procure the attendance of the complainant for recording of his compounding statement with regard to compoundable offences charged against accused---Affidavit made by the complainant at bail stage, could not be made basis for acquittal of accused under S.249-A, Cr.P.C.---Impugned order of acquittal under S.249-A, Cr.P.C., was illegal and unjustified, which could not sustain in the eye of law---Order of acquittal was set aside and case was remanded to the Trial Court for fresh trial in accordance with law. (2011 YLR 2904 LAHORE-HIGH-COURT-LAHORE)