

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Revision Application No.S-71 of 2022

For Applicants: Mr. Saeed Ahmed Bijarani, Advocate

For Respondent/State: Mr. Nazir Ahmed Bhangwar, DPG.

Date of hearing: 21.04.2025

Date of Judgment: 21.04.2025

JUDGMENT

Jan Ali Junejo, J:-- Through the instant Criminal Revision Application filed under Sections 435-439 read with Section 561-A Cr.P.C., the applicants have impugned the order dated 14.11.2022 (here-in-after referred to as the “*Impugned Order*”) passed by the learned 1st Additional Sessions Judge/MCTC Kandhkot hereinafter referred to as the “Trial Court” in Sessions Case No. 114 of 2008, whereby the applicants, though acquitted under Section 345(6) Cr.P.C. based on a compromise, were taken into custody and directed to pay “Diyat” amount to the minor and lunatic legal heirs of deceased Ali Madad.

2. The facts of the case reveal that during the trial, the legal heirs of the deceased, including minor son Muhammad Qasim and a lunatic son Ahmed Khan, through their mother and “WALI”, Mst. Raheema Khatoon, filed compromise applications under Sections 345(2), (4), and (6) Cr.P.C. The compromise was accepted and the applicants were acquitted accordingly. However, the learned trial Court held that while the WALI could compound the Qisas, she could not waive the Diyat amount on behalf of the minor and lunatic heirs. Consequently, the applicants were remanded into custody until payment of Diyat.

3. Learned counsel for the applicants contended that the compromise between the accused and legal heirs of the deceased was lawfully effected and verified before the trial Court, including the waiver of Qisas and Diyat by the adult heirs and the WALI of the minor and lunatic heirs. It was argued that the trial Court misapplied the law by holding that the WALI could not waive Diyat on behalf of the minors, despite presenting valid affidavits and no objection from the State. Furthermore, the learned counsel asserted that remanding the applicants to custody post-acquittal was unjustified, especially when their bail bonds were not cancelled and the minors had likely reached the age of majority by the time of the order. Such coercive enforcement of financial liability violates principles of natural justice and fair trial. The learned counsel, therefore, prayed for setting aside the impugned order to the extent of custody and for maintaining acquittal under Section 345(6) Cr.P.C. without execution through incarceration. It was prayed that the criminal revision be allowed, the applicants' custody declared illegal, and they be acquitted.

4. The learned Assistant Prosecutor General (APG), while supporting the reasoning of the trial Court, argued that though the compromise was accepted under Section 345 Cr.P.C., the legal guardians of minor and lunatic heirs are only empowered to waive Qisas and not the monetary compensation of Diyat under the law. It was emphasized that the Court acted within its lawful authority to protect the financial interest of those incapacitated heirs by requiring the payment of Diyat and taking the accused into custody until compliance. The APG maintained that the Diyat is a mandatory obligation unless lawfully waived by competent heirs, which in this case did not occur. Thus, the learned trial Court rightly enforced payment in accordance with Islamic jurisprudence and criminal procedure. It was prayed that the Criminal Revision Application be

dismissed and the impugned order of the trial Court dated 14.11.2022 be upheld as legal, proper, and in consonance with justice.

5. I have carefully considered the submissions made by the learned counsel representing the Applicants as well as the learned Additional Prosecutor General (APG) for the State. I have also thoroughly reviewed the material available on record. An examination of the case file and the trial court's order reveals that the compromise was recorded voluntarily, with the participation of all relevant parties. This included the submission of affidavits from the legal heirs and the absence of any objections from the State. The learned trial Court correctly observed that, under Section 345(4) of the Criminal Procedure Code (Cr.P.C.), the compounding of *Qisas* is permissible by a *WALI* (legal guardian) on behalf of minors or individuals of unsound mind. However, the trial Court, adopting a strict and literal interpretation of Section 310 of the Pakistan Penal Code (PPC), concluded that the *WALI* is not legally authorized to waive the payment of *Diyat* on behalf of minors. Consequently, the applicants were ordered to remain in custody until the *Diyat* amount was fully paid. It is a well-established principle in legal jurisprudence that in cases involving a compromise under the *Qisas* and *Diyat* Ordinance, the *WALI* of a minor may lawfully compound an offence of *Qatl-e-Amd* (intentional murder), provided that the court is satisfied that the settlement serves the genuine and bona fide interests of the minor. The offence under Section 302 of the Pakistan Penal Code (P.P.C.) was compounded by the mother of the minor and mentally incapacitated individuals, who is also the widow of the deceased, *Ali Madad*, in accordance with Sections 345(2) and 345(4) of the Criminal Procedure Code (Cr.P.C.), with the permission of the competent court. It is a well-established legal principle that the right to waive the payment of "*Diyat*" (compensatory blood money) is vested solely in the minor or the mentally incapacitated person themselves. Consequently, in light of the express

limitations outlined in Sections 309 and 310 of the Pakistan Penal Code, 1860, a legal guardian (“Wali”) does not possess the authority or legal capacity to waive the “Diyat” on behalf of a minor. In this regard, authoritative support can be drawn from the precedent set by the Supreme Court of Pakistan in the case titled ***Javaid Masih v. The State (1993 SCMR 1574)***, wherein it was held that: “Under section 309, P.P.C. in case of ‘Qatal-e-Amd’ an adult and sane Wali of the deceased at any time can waive his right of ‘Qisas’ without any compensation. Such waiver cannot be made where Government is the ‘Wali’ or the right of waiver vests in the minor or insane. Pakistan Penal Code as amended provides for waiver of right of ‘Qisas’ and also compounding of Qisas (Sullah) in Qatal-e-Amd. Such a Sullah (sullah) can be effected by a Wali on accepting Badal Sulah which shall not be less than the value of ‘Diyat amount’. The provisions relating to (Waiver) (Section 309) and compounding right of Qisas (section 310) are new concepts which are in conformity with the Injunction of Islam. Waiver is completely different from compounding rights of Qisas. In the former the Wali waives the right of ‘Qisas’ without any compensation while in the latter the right of Qisas is compounded on receipt of compensation (Badal-e-Sulah). In case where Government is a Wali or where right of Qisas vests in minor or insane no waiver can be effected by the Government or the Wali of minor or insane persons. But they can compound right of Qisas”. Further reference may be made to several authoritative decisions of the Honourable Supreme Court of Pakistan, wherein the entitlement of minors to receive “Diyat” has been unequivocally upheld. These include:

1. ***Ghulam Shabbir and 2 others v. The State (2003 SCMR 663)***;
 2. ***Hassan Din and others v. The State (PLD 1992 Supreme Court 246)***; and
 3. ***Safdar Ali and others v. The State and another (PLD 1991 Supreme Court 202)***.
6. In light of the legal principles enunciated in the aforementioned landmark judgments of the Honourable Supreme Court, the impugned order passed by the

learned trial Court is found to be legally sound and supported by cogent reasoning. While exercising its revisional jurisdiction, this Court is required to assess whether the trial Court has committed any jurisdictional error, manifest illegality, or material irregularity. Upon a careful examination of the record and the applicable law, it is evident that the trial Court has properly interpreted and applied the relevant legal provisions. There is no indication of any legal error, procedural irregularity, or miscarriage of justice in the impugned order. Under established principles of criminal jurisprudence, the revisional jurisdiction is confined to scrutinizing the correctness, legality, or propriety of any finding, sentence, or order of a subordinate Court, as well as the regularity of its proceedings. The applicants have not succeeded in demonstrating the existence of any legal defect or infirmity that would justify interference by this Court. Accordingly, no grounds exist for invoking the revisional jurisdiction, and the impugned order does not warrant interference.

7. In light of the foregoing analysis and the settled legal position, the present Criminal Revision Application is found to be devoid of any substantive merit and is, therefore, dismissed accordingly. As a result, the Impugned Order dated 14.11.2022, passed by the learned 1st Additional Sessions Judge/MCTC, Kandhkot (Trial Court), stands affirmed. Let a copy of this judgment be transmitted to the learned Trial Court for its information and necessary compliance in accordance with law.

JUDGE