

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

1. Cr. Jail Appeal No.S-73 of 2013
2. Cr. Appeal No.S-76 of 2013

10.12.2019.

Ms. Ambreen Siyal, Advocate for pauper appellants.

Appellants have been produced in custody by Jail Authorities.

Ms. Sana Memon, A.P.G, Sindh.

Legal heirs of deceased namely Complainant Muhammad Ramzan (CNIC No.41105-4670559-9), four sons namely Manzoor Ali (CNIC No.41603-0618384-5), Muhammad Juman (CNIC No.41603-0618370-3), Nawab Deen ((CNIC No.41603-0618441-7) and Noor Ameen (CNIC No.41603-0618385-9) and one daughter namely Mst. Mehnaz (CNIC No.41603-0612614-8) are present in Court.

ORDER

Muhammad Saleem Jessar, J,- Appellants Ameer Ali, Ghulam Ali and Fazal Muhammad were tried and convicted in Sessions Case No.368 of 2005 (Re: the State v. Fazal Muhammad & others) emanating from Crime No.13/2005, registered for offences punishable under Sections 302, 114 and 509 PPC vide judgment dated 04.07.2013, handed down by learned Additional Sessions Judge, Tando Muhammad Khan, whereby the appellants were convicted and sentenced for different counts.

2. Appellant Fazal Muhammad against his conviction and sentence filed captioned Cr. Jail Appeal No.S-73 of 2013, while appellants Ameer Ali and Ghulam Ali filed separate appeal bearing Criminal Appeal No.S-76 of 2013. However, during pendency of the appeals, the appellants entered into compromise with legal heirs of deceased and such applications in terms of Sections 345(2) as well 345(6) Cr.P.C were moved, which were sent to learned trial Court for inquiry as to verify the legal heirs of the deceased as well genuineness of compromise effected between the parties.

3. The learned trial Court submitted report dated 05.09.2017, which is available separately in each file. In its report, the learned trial Court has mentioned that during course of inquiry, the reports with regard to legal heirs of deceased from concerned authorities i.e. Mukhtiarkar, Taluka Tando Ghulam Hyder and SHO P.S Tando Ghulam Hyder, were called, so also it got published such notice in the daily newspaper "Kawish"

dated 28.08.2017. The learned trial Court has further mentioned that during inquiry proceedings, the statements of major legal heirs of deceased were also recorded, who affirmed the fact of compromise between them as well appellants / convicts.

4. Moreover, according to report of the trial Court, deceased Mst. Pathani had left her surviving legal heirs, namely, Complainant Muhammad Ramzan, four sons namely Manzoor Ali, Muhammad Juman, Nawab Deen, Noor Ameen and one daughter namely Mst. Mehnaz.

5. All aforementioned major legal heirs of deceased also appeared before this Court and categorically stated that they pardoned the appellants in the name of Almighty Allah, and waived off their right of "*Qisas & Diyat*". As per learned counsel as well major legal heirs present in Court no minor legal heir had been left by deceased at the time of her death.

6. Besides, major legal heirs, there are six minor legal heirs, namely, baby Seema, baby Simran, baby Jado, baby Saba (daughters), Master Momin and Master Mohsin (sons). In such like cases, where deceased leaves behind him some minors; their interest is to be safeguarded on the basis of their share in the "*Diyat*" amount, which is a prescribed one. As such, the Accountant of this Court was directed to calculate the share of aforesaid minors in respect of "*Diyat*" amount, as per gazette notification issued by Government of Pakistan for current year and submit his report. Accordingly, the Accountant has furnished his report, which reflects that as per gazette notification issued by Government of Pakistan, an amount of Rs.2,320,202/- has been notified and declared as "*Diyat*" for financial year 2019-20. As such, in order to safeguard the interest of the minors, the appellants would be liable to pay their share in the "*Diyat*" amount. Amongst legal heirs left by deceased three are major, while six are minors, and according to calculation of the Accountant vide office note dated 20.11.2019, an amount of Rs.1,063,426/- comes in the share of three major legal heirs, whereas an amount of Rs.1,256,776/- becomes share of minor legal heirs in the "*Diyat*" amount. Since all the three major legal heirs, vide their affidavits sworn by them as available on record, have waived off their rights; therefore, the appellant Nek Muhammad is directed to deposit an amount of Rs.1,256,776/- in respect of "*Diyat*" of six minors with the Additional Registrar of this Court, which will be invested in the names of

minor legal heirs in a profitable scheme of the government and would be paid to the minor legal heirs as and when they attain the age of majority.

7. As far as the compensation amount of Rs.1000,000/- in lieu of Section 544-A Cr.P.C in respect of appellant Nek Muhammad is concerned, which in the light of dictum laid down by this Court in cases of *MUHAMMAD v. THE STATE (2015 YLR 1969)* and *KARIM BUX v. THE STATE (PLD 2015 Sindh 113)* is hereby reduced to Rs.500,000/- (Rupees Five Lacs); therefore, appellant Nek Muhammad shall also pay Rs.500,000/- as compensation to the legal heirs of the deceased. As far as, Daman and Arsh amounts are concerned, the same as per affidavits sworn by injured Abdul Majeed, Muhammad Uris, Ghazi Khan and Abdul Jabbar stands waived off against the appellant(s).

8. The learned A.P.G appearing for the State and complainant present in person raised no objection if listed applications are allowed.

9. Since the interest of minors stands safeguarded, therefore, there will be no impediment to allow the compromise with the appellants. As, the report furnished by the trial Court reveals that compromise between the parties appears to be volunteer, genuine and without any duress and coercion, therefore, permission to compound the offence is accorded to the parties and in result whereof compromise between the parties is hereby accepted and appellants are acquitted of all the charges in terms of compromise. The appellants are produced in custody before this Court today; they are sent back to jail custody with direction to the Superintendent Central Prison, Hyderabad, to release them forthwith if not required in any other custody case. However, appellant Nek Muhammad shall be released subject to deposit of Rs.1,256,776/- (Rupees Twelve Lacs Fifty Six Thousand Seven Hundred Seventy Six) as "Diyat" amount in respect of the minors of the deceased with the Additional Registrar of this Court as well as Rs.500,000/- (Rupees Five Lacs) as compensation to the legal heirs of deceased. The compensation amount after recovery shall be distributed among all legal heirs of deceased equally. Both the above-captioned criminal appeals alongwith listed applications, subject to payment of Diyat as well compensation amount, stand disposed of.

JUDGE