

Compromise

330

**HIGH COURT OF SINDH CIRCUIT COURT
AT HYDERABAD**

Cr. Appeal No. D- 223 of 2019

[Confirmation Case No. 53 of 2019]

BEFORE:

**MR. JUSTICE MUHAMMAD KARIM KHAN AGHA
MR. JUSTICE KHADIM HUSSAIN TUNIO**

Appellant: Through Mr. Farhad Ali Abro advocate
Complainant: None present
State: Through Mr. Shawak Rathore, D.P.G
Date of hearing: 24.10.2023
Date of Decision: 31.10.2023

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- Through instant appeal, appellant Ghulam Hussain assailed conviction and sentence awarded to him, as mentioned in the concluding para of the impugned judgment dated 03.12.2019, passed by the learned 1st Additional Sessions Judge/MCTC, Shaheed Benazirabad, in Sessions Case No.262 of 2018, emanating from Crime No.91 of 2018, registered at Police Station B-Section, Nawabshah, under section 302, 376 and 449 PPC.

The appellant Ghulam Hussain was roped in the subject case on the allegation of trespassing the house of complainant and then committing rape and murder of complainant's daughter namely baby Shumaila aged about 8/9 years and he was accordingly tried by the learned trial Court and was convicted and sentenced as under:

1. **For offence punishable under Section 302(b) PPC.** He has been sentenced to death, to be hanged by neck till death with direction to pay compensation to the tune of Rs.2,00,000/- [Rupees Two Hundred Thousand] to the legal heirs /walis of deceased, failing which, he has to suffer simple imprisonment of six (06) months.
2. **For offence punishable under Section 376 PPC.** He has been sentenced to death, to be hanged by neck till death with direction to pay fine of Rs.2,00,000/- [Rupees Two Hundred Thousand] to the legal heirs /walis of deceased, failing which, he has to suffer simple imprisonment of six (06) months.
3. **For offence punishable under Section 449 PPC.** He has been sentenced to undergo rigorous imprisonment for life with direction to pay fine of Rs.2,00,000/- [Rupees Two Hundred Thousand] and in case of default in payment thereof he has to further undergo simple imprisonment for six (06) months.

During pendency of the appeal, legal heirs of the deceased i.e her father and mother namely Muhammad Niaz Joyo and Mst. Zainab Joyo and appellant/accused jointly moved applications under Sections 345(2) and 345(6) Cr.P.C before the learned trial Court on the ground that they have compromised the matter outside the Court on the intervention of nekmards of their locality, therefore, they filed aforementioned applications seeking permission to compound the offences and as consequent thereof acquittal of the appellant.

The learned trial Court submitted report dated 30.08.2023 which shows that as to the genuineness of the said compromise, learned trial Court got published notice in daily Nawa-e-Waqt and also called reports in respect of legal heirs of deceased from the concerned Mukhtiarkar, SHO of P.S B-Section Nawabshah as well as NADRA authorities and the said reports revealed that only Muhammad Niaz Joyo and Mst. Zainab Joyo (being father and mother) are legal heirs of the deceased, hence notices were issued to the said legal heirs, who appeared before the learned Court. Thereafter, the learned Judge had himself recorded the statements of said legal heirs; whereby they stated that they have patched up with the convict/appellant and as such pardoned him in the name of Almighty Allah and waived off their right of diyat. The report further reveals that at the time of murder, the deceased baby Shumaila had left the aforementioned surviving legal heirs. After completing all legal formalities learned trial Court vide Order dated 07.08.2023 disposed of the compromise applications, whereby granted permission to the parties to enter into compromise only to the extent of Section 302 PPC, however, declined their request for compromise in respect of Section 376 and 449 PPC, as offences under said Sections are not compoundable.

Today learned counsel for the appellant submits that since the legal heirs have pardoned the appellant in the name of Almighty Allah and have waived of their right of diyat, therefore, appellant may be acquitted of the charge by way of compromise. However, he is unable to satisfy this Court with regard to conviction and sentence awarded to the appellant under Sections 376 and 449 PPC as offences under both these Sections are not compoundable.

Learned D.P.G while supporting the order passed by the learned trial Court on the compromise applications, recorded his no objection for accepting the compromise only to the extent of 302 PPC and submits that since the Section 376 and 449 PPC are not compoundable as such this appeal may be heard on merits to that extent.

5

We have heard the learned counsel for the parties and have examined the file minutely:

Perusal of impugned judgment shows that appellant was charged for committing offences under Section 302, 376 and 449 PPC and after full dressed trial Court he was convicted and sentenced under Sections 302(b), 376 and 449 PPC. The Schedule-II, as provided in Cr.P.C reflects that the offence committed under Section 302 is compoundable, whereas the offences committed under Section 376 and 449 PPC are not-compoundable. As such learned trial Court has rightly declined the plea of parties for entering into compromise in respect of Section 376 and 449 PPC also.

However, since the offence committed under Section 302 PPC is compoundable and the legal heirs of the deceased have pardoned the convict/appellant in the name of Almighty Allah and have also waived off their right of diyat, for which they have been granted permission by the learned trial Court after conducting all legal formalities as mentioned supra, therefore, there is no impediment to accept the compromise entered into between the parties and acquit the convict/appellant to the extent of Section 302(b) PPC only. Accordingly compromise entered into between the parties is accepted, however, only to the extent of Section 302(b) and the convict/appellant is acquitted of the said charge.

As far as conviction and sentence awarded to the convict/appellant under Section 376 and 449 PPC is concerned, offences under both these Sections are not compoundable, therefore, plea of compromise in respect of both these Sections is declined and the appeal is adjourned to **07.11.2023 at 08:30 am** for hearing on merit to the extent of conviction awarded to the appellant under Section 376 and 449 PPC. A copy of this judgment shall be sent to SHO P.S B-Section Nawabshah, who shall produce the complainant Muhammad Niaz before this Court alongwith himself and service report on 07.11.2023 at 08:30 am. Notice also be issued to learned Additional P.G for next date of hearing.