

Compromise with statement

PRESENTED ON 10-5-2022

Additional Registrar

**IN THE HIGH COURT OF SINDH CIRCUIT
COURT HYDERABAD**

Cr. Appeal No. S-71 of 2022

1. Farhan @ Tinda S/o Yameen Leelgar
2. Abid @ Goongo S/o Sarwar Leelgar
3. Sabir @ Soota S/o Sarwar Leelgar
All Adults, Muslims,
R/o Muhallah Manuabad,
Nawabshah Taluka Nawabshah
District Shaheed Benazirabad
Presently confined
at Central Prison MirpurkhasAppellants.

VERSUS

The State.....Respondent.

Crime No.174/2012
U/s 302, 504, 506/2, 34 PPC
P.S A-Section Nawabshah

APPEAL UNDER SECTION 410 Cr.P.C.

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ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

Cr. Appeal No.S-71 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of application u/s 345(2) Cr.P.C (M.A-8286 of 2023).
2. For hearing of application u/s 345(6) Cr.P.C (M.A-8287 of 2023).
3. For hearing of application u/s 426 Cr.P.C (M.A-4736 of 2023).

04.12.2023.

Mr. Zahid Hussain Khoso, Advocate for appellants.

Mr. Shahid Ahmed Shaikh, Addl. Prosecutor General, Sindh.

I have heard the learned counsel for the appellant and learned A.P.G.

Reserved for judgment.

Hafiz Fahad

Compromise with installments

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**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Cr. Appeal No. S- 71 of 2022

1. For hearing of application u/s 345(2) Cr.P.C (M.A-8286 of 2023).
2. For hearing of application u/s 345(6) Cr.P.C (M.A-8287 of 2023).
3. For hearing of application u/s 426 Cr.P.C (M.A-4736 of 2023).

Mr. Zahid Hussain Khoso, Advocate for appellants.

Mr. Shahid Ahmed Shaikh, Additional Prosecutor General.

Date of hearing : 04.12.2023

Date of Judgment : 08.12.2023

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J.- Through instant appeal, the appellants namely, (1) Farhan @ Tinda, (2) Abid @ Goongo and (3) Sabir @ Soota have assailed the conviction and sentence awarded to them, as mentioned in the concluding para (Point No.3) of the impugned judgment dated 13.04.2022, passed by the learned 1st Additional Sessions Judge/Model Criminal Trial Court, Shaheed Benazirabad in Sessions Case No.1343 of 2015, emanating from Crime No.174 of 2012, registered at Police Station A-Section Nawabshah for offences under sections 302, 504, 506(2), 34 PPC.

2- Appellants named above as set out in the impugned judgment, were convicted and sentenced to suffer imprisonment for life with payment of compensation amount of Rs.2,00,000/- [Rupees Two Lac] each to the legal heirs of the deceased. During pendency of the appeal, the legal heirs of deceased namely Shafi Muhammad (brother), Mst. Marvi (sister) and Mst. Mehtab @ Kiran (widow of deceased) have jointly moved applications under sections 345(2) and 345(6) Cr.P.C, on the ground that they have compromised the matter outside the Court and have pardoned the appellants in the name of ALMIGHTY ALLAH and on the intervention of nekmards of the locality, therefore, they filed

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aforementioned applications seeking permission to compound the offence and as a result thereof acquittal of the appellants. The said applications were sent to the learned 1st Additional Sessions Judge/MCTC, Shaheed Benazirabad for conducting an inquiry in respect of the legal heirs of deceased and genuineness of compromise between the parties, who has submitted his report dated 13.09.2023, which is available on record.

3- Learned counsel for the appellants as well as learned A.P.G for the State submit that the offence is compoundable and all the legal heirs of deceased have pardoned the appellants in the name of Almighty Allah and without claiming any compensation amount; therefore, the listed applications may be accepted and the appellants may be acquitted in terms of compromise.

4- Learned Additional P.G after going through the compromise applications and the report of the learned 1st Additional Sessions Judge, Shaheed Benazirabad, submits that the entire exercise carried out by him is in accordance with law; however, he submitted that compensation should be paid by the appellants as it cannot be given-up; hence, subject to payment of compensation amount as awarded by the trial Court, he has no objection if compromise applications are accepted and as a result thereof, the appellants are acquitted in terms of compromise.

5- I have heard the learned counsel for the parties and have examined the file minutely. Admittedly, the offence is compoundable and the parties i.e. the appellants and the legal heirs of the deceased have filed joint applications for compounding the offence and acquittal of the appellants. These applications were sent to the trial Court for verification of the legal heirs of deceased and genuineness of compromise and such report has been received, last but relevant para of the same is as under:-

"That from the statements of above mentioned legal heirs of deceased Gul Muhamamd Bhangwar, it transpires that the above named legal heirs of the deceased have pardoned the convicts Farhan @ Tinda Leelgar, Abid @ Goongo Leelgar and Sabir @ Soota Leelgar in the name of Almighty Allah without receiving any compensation or diyat amount. No other person claiming to be legal heir of the above named deceased has come

forward in response to publication of notice in daily newspaper Kawish, nor name of any other person has come to light in the reports furnished by Mukhtiarkar Revenue Nawabshah, SHO P.S A-Section Nawabshah and Assistant Director NADRA Sukkur. The statements of above named legal heirs of the deceased, appears to be voluntary, without any duress and coercion."

6- It appears from the said report that after adopting other required formalities, statements of the legal heirs were recorded. It further appears that complainant Muhammad Khan, who was the brother of the deceased had expired during pendency of this appeal. However, the remaining surviving legal heirs namely Shafi Muhammad (brother), Mst. Marvi (sister) and Mst. Mehtab @ Kiran (widow of deceased) have pardoned the appellants and have not claimed any compensation from them.

7- Admittedly, the offence is compoundable and the parties i.e. the appellants, and the legal heirs as mentioned above have filed joint applications for compounding the offence and acquittal of the appellants. These applications were sent to the trial court for verification of legal heirs of deceased and genuineness of compromise and report has been received which reveals that reports from concerned SHO and Mukhtiarkar as well as family tree from NADRA were called and notice in daily Express newspaper dated 05.09.2023 was published. As per reports of SHO and Mukhtiarkar as well as the family tree of NADRA no other person except the aforementioned legal heirs claiming to be legal heir of the deceased came in picture and nobody objected to the compromise. Learned counsel for the parties have stated that both parties have compounded the offence and legal heirs of the deceased have pardoned the appellants in the name of ALMIGHTY ALLAH and they also do not claim any diyat, daman or compensation, hence they have no objection if the appellants are released by this Court.

8- It is noted that the trial Court has awarded compensation of Rs.2,00,000/- [Rupees Two Lac] each payable to the legal heirs of the deceased by the appellants. Though the same has been waived off by the legal heirs of the deceased however, the same according to law is mandatory and cannot be waived off / given-up.

9- In view of the above, the compromise arrived at between the parties appears to be genuine and not the result of any coercion or compulsion and since the parties seem to be related to each other, the same is likely to promote harmony between them and peace in the society. There appears to be no impediment legal or otherwise in accepting the compromise between the parties. Accordingly, the application under Section 345(2) is accepted and the parties are allowed to compound the offence. Resultantly, the application under Section 345(6) Cr.P.C. is also allowed and the appellants are acquitted in view of the compromise arrived at between the parties. Consequently, the conviction and sentence awarded by the trial court is set-aside only to the extent of imprisonment; however, as regards to payment of compensation as mentioned in the concluding para of the impugned judgment viz. Rs.2,00,000/- [Rupees Two Lac] each, the appellants are liable to furnish a security bond equivalent to the said amount before the Additional Registrar of this Court with an undertaking to ensure payment of aforementioned amount of compensation to the legal heirs of deceased as directed in the impugned judgment in 36 installments, without fail. Subject to fulfilling such condition and on payment of 1st installment with the Additional Registrar, the appellants shall be released forthwith if not required in any other custody case and the appellants shall pay remaining monthly installments regularly, in case of their failure, appropriate action will be taken against them. Soon after completing all the installments of compensation amount, the same shall be disbursed amongst the legal heirs of deceased as per law.

10- Accordingly, the appeal stands disposed of in the above terms.