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IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Jail Appeal No.D-69 of 2019.
Confirmation Case No.D- 37 of 2019.

1. For orders on office objection as flag A.
2. For hearing of M.A. No. 3308/2022.
3. For hearing of M.A. No.3309/2022.
4. For hearing of Main Case.

Appellant (Shahzado Shaikh) : Through Mr. Gulshan R. Dayo, Advocate.

The State : Through Mr. Ali Anwar Kandhro, Addl. P.G.

L.Rs of deceased: : Mst.Bashiran Khatoon, Deedar Ali, Dildar Ali, Abdul Rasheed, and Ghulam Fareed present in person. (Complainant/father of deceased has expired due to natural death on 14.02.2022.)

Date of hearing : 12.3.2024.

ORDER.

MUHAMMAD SALEEM JESSAR:- Appellant Shahzado son of Maharam Ali Shaikh was tried by the learned 1st Additional Sessions Judge, Kamber in Sessions Case No.261/2018, re-The State v. Shahzado Shaikh and others arisen out of Crime No.21/2018, registered at P.S Mahi Makol, for offences under Sections 302, 114, 34 PPC. After regular trial, the appellant was convicted by the trial Court vide judgment dated 22.10.2019 and sentenced as under:-

- i) *For offence U/S 302(b) PPC to Death as Tazir with direction that the convict Shahzado Shaikh be hanged by the neck till he is dead subject to confirmation by the Honorable High Court of Sindh, Circuit Court, Larkana and he is also directed to compensate the bereaved family/LRs of the deceased to the tune of Rs.500,000/= in terms of section 544-A Cr.P.C and in case of non-payment thereof to undergo simple imprisonment of six months.*
- ii) *For offence U/S 338 (C) to pay Rs.116,010/- (1/20th of Diyat) to be paid in lump sum.*

2. Appellant preferred appeal. The same was admitted to regular hearing on 05.11.2019. During the pendency of the appeal, parties entered into the compromise and an application U/S 345(2) Cr.P.C bearing M.A No.3308/2022 has been filed for permission to enter into the compromise and

another application U/S 345(6) Cr P C bearing M.A No 3309/2022 for acquittal of the appellant by means of the compromise, with the prayer that the parties have entered into the compromise and as a result thereof legal heirs of the deceased have pardoned the appellant/convict and also waived their right of Qisas, Arsh and compensation in the name of Almighty Allah without claiming any monetary compensation/Badl-e-Sulh. Complainant/father of deceased has already expired due to natural death on 14.02.2022 (Death certificate of complainant is also brought on record). Therefore, it is prayed that compromise may be accepted and appellant may be acquitted of the charge by way of the compromise.

3. In order to verify the genuineness of the compromise effected between the parties and also to determine the fact of effecting of the compromise without any duress and compulsion and also to confirm the details of the legal heirs of the deceased, the above compromise applications were sent to the trial Court vide order dated 30.8.2022 with direction to hold inquiry regarding the genuineness or otherwise of the compromise and submit a comprehensive report to that effect. After exhausting due process of enquiry into the genuineness of the compromise held between the parties by calling reports from concerned SHO, Secretary Union Council as well as NADRA and by recording statements of legal heirs, learned trial Court submitted the report dated 28.9.2022 to the effect that legal heirs of the deceased have admitted that they have pardoned the appellant/accused Shahzad Shaikh in the name of Almighty Allah without obtaining/claiming any Qisas, Diyat or Compensation and they have no objection for acquittal of appellant/ accused.

4. We have heard the learned advocate for the appellant, learned Addl. P.G. and the legal heirs of the deceased. Complainant/father of deceased has already expired. Though minor Zamin Ali is not present but mother is competent to enter into compromise. All the legal heirs of deceased including Mst. Bashiran Khatoon (mother of deceased) as well as Deedar Ali, Dildar Ali, Abdul Rasheed and Ghulam Fareed (brothers of deceased) have stated that due to intervention of their nekmards and in order to bury their hatchets and live peaceful life, they have forgiven the appellant/accused in the name of Almighty Allah and they have also waived their right of Qisas and do not claim diyat or any compensation without any duress and coercion.

5. Additional P.G. recorded no objection for allowing the compromise application.

6. In view of the above, permission to enter into the compromise is allowed. Resultantly, keeping in view the report of the trial Court and for better relations between the parties in future, application for compromise is allowed. The appeal is allowed by way of compromise. The conviction and sentence awarded to the appellant/accused under impugned judgment dated 20.10.2019 is set aside. Accused/appellant is acquitted in terms of compromise u/s 345(6), Cr.P.C. The appellant shall be released forthwith if not required in any other custody case.

7. In the wake of above acquittal of appellant by way of compromise in main appeal, the criminal reference/confirmation case No.D- 37 of 2019 moved by learned trial for confirmation of death sentence is also set aside and answered in negative.

8. The instant appeal alongwith confirmation case stand disposed of in the above terms along with listed applications.

JUDGE

JUDGE

Shabir