

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Appeal No. S-51 of 2023

Appellant: Gada Hussain son of Muhammad Ismail Shaikh
Through Mr. Ahmed Bux Abro, Advocate.

The State: Through Mr. Ali Anwar Kandhro, Additional
Prosecutor General, Sindh.

Legal Heirs: Mst. Saeeda, Deedar Ali and Mst. Naseem Khatoon
present in person.

Date of Hearing : 11.03.2024

Date of Judgment : 11.03.2024

JUDGMENT

Muhammad Saleem Jessar, J.: Through this Judgment, I intend to decide instant Criminal Appeal filed by Appellant Gada Hussain, as he was convicted and sentenced vide Judgment dated 24.05.2023, passed by learned Additional Sessions Judge, Ratodero in Sessions Case No.285/2022 (*Re-The State v/s. Gada Hussain and others*), arising out of Crime No.03 of 2022, registered at Police Station Kety Mumtaz, for offence punishable under sections 302, 311, 34, 120-B P.P.C whereby the appellant after full dressed trial was convicted under section 302 (b), P.P.C and sentenced to undergo Imprisonment for Life as Tazir. The benefit of section 382-B, Cr.P.C. was extended to the appellant.

2. During pendency of this appeal, parties have entered into compromise and have filed compromise applications under sections 345(2) & 345(6), Cr.P.C. and the matter was sent to the learned trial Court for enquiry about verification and genuineness of compromise between the parties. The learned trial Court after completing all codal formalities and recording statements of the legal heirs of the deceased has furnished its report vide endorsement dated 09.03.2024. It reveals that compromise between the parties is genuine, voluntary and without any coercion and compulsion. Learned trial Court has given the details of legal heirs, which shows that on notice legal heirs, namely, Deedar Ali and Mst.Saeeda, father and mother respectively of deceased Mst. Shabana, appeared, whereas for deceased Mst. Rasheeda Khatoon her mother namely Mst. Naseem Khatoon effected appearance.

3. Learned counsel for the appellant/accused submits that the parties have voluntarily entered into compromise on the intervention of nekmarks of the locality; the legal heirs have forgiven the appellant/accused in the name of Almighty Allah and have also waived their right of Qisas and Diyat. He further submits that the legal heirs of both the deceased women have forgiven the appellant/accused in the name of Almighty Allah without claim of *Badl-e-Sulh* / monetary compensation. In support of his contentions, learned counsel for the Appellant placed reliance upon case law reported as 2023 P.Cr.L.J Note 81 (*Muhammad Wasim v/s. The State and another*).

4. Learned Additional Prosecutor General has recorded his no objection on the ground that the legal heirs of the deceased have voluntarily forgiven the appellant, they have waived their right of Qisas and Diyat and that the offence is compoundable under the law.

5. Heard learned counsel for the respective parties and have perused the material available on record.

6. The legal heirs of both the deceased women and appellant-accused have jointly filed compromise applications under sections 345(2) & 345(6) Cr.P.C. and the matter was referred to the learned trial Court for enquiry regarding genuineness of the compromise between the parties. The learned trial Court after conducting enquiry has furnished its report, which reveals that the legal heirs of the deceased have pardoned the appellant/accused in the name of Almighty Allah; they have also waived their right of Qisas and Diyat and do not claim any monetary compensation/badl-e-sulh from the appellant. The legal heirs have also filed their affidavits raising no objection in case the appellant is acquitted in terms of compromise. At this juncture, I rely upon the cases reported as *Bashir Ahmed v. The State* (PLD 1995 Karachi-5) and *Sartaj Ahmed and others v. Mushtaq Ahmed and others* (2006 SCMR 1916).

7. In view of above, application under section 345(2) Cr.P.C is allowed and permission is accorded to the parties to compound the offence; resultantly, the application under section 354(6), Cr.P.C. is also allowed and appellant Gada Hussain Shaikh is acquitted of the charge by way of compromise. He shall be released forthwith, if not required to be detained in any other criminal case.

8. Appeal is disposed of in the above terms.

JUDGE