

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Appeal No.S-119 of 2013
Criminal Jail Appeal No.S-109 of 2013

<i>Date</i>	<i>Order with signature of Judge</i>
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Mr. Heman Das S. Sanghani, advocate for the appellant.
Ms. Sana Memon, Assistant Prosecutor General, Sindh.

Date of hearing: 23.08.2021
Date of announcement: 27.08.2021

ORDER

KHADIM HUSSAIN TUNIO, J.- Appellant was tried in Sessions Case No. 233 of 2011, emanated from Crime No. 322/2011, registered at PS Badin under sections 302(c) and vide judgment dated 17.08.2013, passed by learned Sessions Judge, Badin the appellant was convicted and sentenced to suffer R.I for 25 years and compensation of Rs.200,000/-, in default thereof to suffer S.I for one year more. Benefit of Section 382-B Cr.P.C was extended to the appellant.

2. Precisely, facts pertaining to the instant appeals are that on 23.10.2011, the complainant Mst. Haleman lodged an FIR with Police Station Badin stating therein that prior to the incident, her daughter Mst. Ranbai had come to her crying and complained that her husband kept maltreating her. On the incidental day, complainant's son came to her informing that Mst. Ranbai and her husband had fought. Hearing this, the complainant boarded a motorbike with her son and reached her daughter's residence and found her injured. On the place of incident, one Missri Rajo informed the complainant that he heard cries of Mst. Ranbai and saw her husband Angaro causing Pestle blows to her head. The injured was taken to the hospital where during treatment, she succumbed to her injuries. Thereafter, the FIR was lodged by the complainant and the appellant, after trial, was convicted as stated supra.

3. Appellant, against his conviction, filed the instant appeal and jail appeal. However during pendency of the both, the appellant entered into compromise with the legal heirs of the deceased and application u/s 345(2) and 345(6) Cr.P.C were moved, which were sent to the learned Sessions Judge Badin for verification of legal heirs of deceased and genuineness of compromise arrived at between the parties.

4. The learned Sessions Judge, Badin submitted his report dated 07.07.2021. In his report, the learned Sessions Judge has mentioned that

during the course of enquiry, he called reports with regard to legal heirs of deceased from SHO P.S Badin and Mukhtiarkar (Rev) Badin, so also such notice was published in daily newspaper “*Kawish*”. The learned Sessions Judge further mentioned that during the inquiry, the legal heirs of the deceased reiterated the contents of their statements coupled with affidavits to be true and reaffirmed that the compromise is voluntary.

5. Learned counsel for the appellant has argued that all the legal heirs of the deceased are major; that they have waived their rights of *Diyat* with their freewill and without any pressure or duress; that the appellantis a poor person and cannot afford the payment of Arsh amount. Learned Assistant Prosecutor General has conceded to allowing the compromise application.

6. Having heard the learned counsel for the parties and perused the record. As for the legal heirs of the deceased Mst. Ranbai, the details regarding the same are listed below:-

S. No.	Name	Relation with deceased (Ranbai)	Age about
1	Muhammad Umer	Son	34 years
2	Mehram	Son	28 years
3	Tariq	Son	25 years
4	Asghar	Son	27 years
5	Sikandar	Son	20 years
6	Akbar Ali	Son	21 years
7	Mst. Benazir (married)	Daughter	36 years
8	Mst. Roshana (married)	Daughter	31 years
9	Mst. Haleeman	Mother	54 years

7. All the legal heirs of the deceased appeared in person before this Court and admitted the contents of the compromise application to be true and correct on 23.08.2021 and waived their rights of *Diyat*.

8. The question for determination before this Court was whether the sentence awarded as Ta’zir to the accused could be compounded *in lieu* of a punishment u/s 311 PPC. For reference, S. 311 PPC is reproduced herein below:-

“**311.**Ta'zir after waiver or compounding of right of qisas in qatl-i-amd.--Notwithstanding anything contained in Section 309 or Section 310 [where all the walis do not waive or compound the right of qisas or [if] the principle of *fasad-fil-arz* [is attracted] the Court may, [****] having regard to the facts and circumstances of the case, punish an offender against whom the right of qisas has been waived or compounded with [death or imprisonment for life, or] imprisonment of either description for a term-which may extend to

[fourteen] years [but shall not be less than ten years] as ta'zir.”

A plain reading of the above provision suggests that the power u/s 311 PPC is to *only* be exercised where all the “*walis*” of the deceased have not compounded the offence. In case where all the “*walis*” have in fact waived the off or compounded the offence, a punishment of imprisonment as Ta’zir would not be necessary. Similar view was taken in the case of *Laiq Nawaz versus The State [PLJ 2001 Cr.C. (Peshawar) 1260 (DB)]*.

9. In view of the above facts and circumstances and in light of the report submitted by the learned Sessions Judge, compromise between the parties appears to be voluntary, genuine and without any duress and coercion. Accordingly, permission to compound the offence is accorded to the parties, and in result whereof the compromise between the parties is hereby accepted and appellant Angaro son of Aachar Rajoo is acquitted of the charge in terms of compromise u/s 345(6). The appellant is reportedly confined in jail; he shall be released forthwith if not required in any other custody case. The captioned criminal appeals stand disposed of in the above terms.

JUDGE

Irfan Ali