

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

Criminal Appeal No.S-190 of 2021

For hearing of MA No.4012/2022.

For hearing of MA No.4013/2022.

Appellant: Dhani Bux @ Mataro Dalwani through Mr. Irfan Ahmed Qureshi, Advocate.

Respondent: The State through Mr. Shahid Ahmed Shaikh, Deputy Prosecutor General Sindh.

Complainant: Complainant / legal heirs of deceased appeared in Court.

Date of hearing: 12.09.2022.

Date of Decision: 12.09.2022.

J U D G M E N T

Amjad Ali Sahito, J. Through the above miscellaneous applications being MA No.4012/2022, the parties have prayed to accord permission to compound the offence under section 345[2] Cr.P.C. and MA No.4013/2022 for acquittal of the appellant under section 345 [6] Cr.P.C.

2. In terms of impugned judgment dated 06.10.2021, passed by the learned trial Court / 1st Additional Sessions Judge / MCTC, Badin in S.C. No.531/2020, Crime No.130/2020 for the offences under sections 302 PPC registered at PS Talhar, District Badin, the appellant was convicted and sentenced under section 302 (b) PPC to suffer Imprisonment for ten years and to pay compensation of Rs.600,000/- to the legal heirs of deceased Mst. Hani as provided under section 544-A Cr.P.C; in default whereof, to suffer S.I. for one year more. Benefit of section 382-B Cr.P.C was extended to the appellant.

3. It is pertinent to mention here that during pendency of instant appeal, the parties have patched up and compromised the matter outside Court. They have filed the applications in respect of compromise, which are signed by legal heirs of deceased and accused as well as supported with the affidavits of the appellant and legal heirs of the deceased. All the legal heirs of deceased namely Mst. Meharunissa [complainant] and Mst. Tahiran have raised their no objection for acquittal of the appellant by stating that they have entered into compromise with them due to intervention of nekmard namely Dr. Abdul Ghafoor Dalwani and pardoned the appellant in the name of Almighty ALLAH.

4. In order to ascertain the genuineness of the compromise between the parties, the compromise applications were sent to the trial Court for careful inquiry into the matter. The learned trial Court vide its letter dated 30.05.2022 has submitted its report, wherein it is stated that, with regard to the legal heirs of deceased the reports were called from the Mukhtiarkar (Revenue) Talhar, SHO of Police Station Talhar and Assistant Director NADRA Badin Zone and found as per report of Mukhtiarkar and SHO concerned that the deceased has left his legal heirs namely Mst. Meharunissa and Mst. Tahiran as daughters. NADR report also stated the said legal heirs to be daughters of deceased. Learned trial Court also recorded statements of legal heirs who confirmed the compromise with appellant. Nobody come forward to raise objection to the compromise application.

5. On 08.09.2022, the legal heirs namely Mst.Meharunissa and Mst. Tahiran appeared before this Court and confirmed the compromise with the appellant on the intervention of their nekmards and forgiven the accused in the name of Almighty ALLAH. The legal heirs have raised no objection if the appellant is acquitted from the charge. However, they have shown apprehension that after release from the Jail, the appellant shall not occupy their property / land. They have also requested that nekmard namely Dr. Professor Abdul Ghafoor Dalwani on his intervention compromise was effected

between the parties may be directed to file written undertaking before this Court that the appellant shall not occupy their property / land in any manner. As such, production order for the appellant was issued and in response thereto, the appellant was produced under strong escort who filed his affidavit duly verified by NADRA, wherein he has stated that he has no concern with the lands of the legal heirs of deceased and he will not interfere into the lands of the legal heirs in any manner. He also bound down himself that in case, any interruption on his part was found to have been made, this compromise may be withdrawn by both legal heirs. Today, nekmard namely Dr. Abdul Ghafoor Dalwani on whose intervention the compromise taken place appeared and filed his affidavit duly verified by the NADRA that he being notable of the area will secure lawful agriculture land of the legal heirs without any interference of the accused Dhani Bux @ Mataro. So far the order dated 27.05.2022 passed by this Court while observing that this is a fit case of 'fasad-fil-arz', such notice was issued to learned counsel as to why the appellant should not be convicted under section 311 PPC after accepting the compromise is concerned, learned counsel for appellant has relied upon the case of 'IQRAR HUSSAIN and others v. The STATE and others' reported in 2014 S C M R 1155, wherein the Hon'ble Supreme Court has held as under:-

“10. After the accused entered into a genuine compromise with the complainant party / legal heirs of the deceased and when no clear evidence was available to constitute the offence involving the element / mischief of **فساد في الارض**, then, the learned High Court was not justified in law to convert punishment of the appellants to one under section 311, P.P.C. instead of acquitting them on the basis of compromise.”

6. Since both the legal heirs of the deceased appeared in Court and have confirmed the contention of compromise applications and stated that they have entered into compromise with the appellant with their own freewill and consent and without any inducement in the name of Almighty ALLAH. They have also raised no objection for acquittal of the appellant. The

offence is compoundable. Therefore, in order to keep cordial relations and harmony between the parties in future and strike off the enmity between them, the permission to compound the offence is allowed under section 345 [2] Cr.P.C. Resultantly, the impugned judgment is set-aside. So far the compensation amount is concerned, in the impugned judgment learned trial Court has ordered that in case of failure to pay the compensation amount, the appellant will suffer one year simple imprisonment. The legal heirs of the deceased have pardoned to the accused in the name of Almighty ALLAH and did not claim anything in lieu of compromise and the appellant has already served out one year the period of his imprisonment for non-payment of compensation amount. In view of above, let release writ be issued to the concerned Jail authorities with direction to release the appellant namely Dhani Bux @ Mataro forthwith, if he is not required in any other custody case.

7. It is made clear that if any interruption on the part of appellant in the lands of legal heirs of deceased is found, then the legal heirs are at liberty to file application for cancellation compromise taken place with the appellant.

8. With above modification, instant Criminal Appeal preferred against the impugned judgment is disposed of along with listed applications.

JUDGE