

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

Criminal Appeal No.S-147 of 2019
Criminal Jail Appeal No.S-99 of 2019

1. For hearing of MA No.7891 / 2022
2. For hearing of MA No.7892 / 2022
3. For hearing of MA No.7893 / 2022
4. For hearing of MA No.7894 / 2022
5. For hearing of MA No.7895 / 2022
6. For hearing of MA No.7896 / 2022
7. For hearing of MA No.7897 / 2022

Appellants: Sher Muhammad, Muhammad Azeem and Muhammad Ayoub [produced in custody from Central Prison, Hyderabad] through Mr. Ikhlaq Ahmed Leghari, Advocate.

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

Complainant: Ismail through Mr. Ghulamullah Chang, Advocate.

Date of hearing: 31.05.2023.

Date of Decision: 31.05.2023.

J U D G M E N T

Amjad Ali Sahito, J. Through Criminal Jail Appeal No.S-99 of 2019 and then Criminal Appeal No.S-147 of 2019, the appellants have impugned the common judgment dated 25.04.2019, whereby the learned trial Court / 1st Additional Sessions Judge/MCTC, Badin convicted appellants in crime No.147 / 2014, registered at PS Badin for the offences under sections 302, 324, 337-H (ii), 114, 504 PPC in S.C No.211 of 2014 and Direct Complaint No.03 of 2014. In the instant case, co-accused namely, Abdul Hakeem, Ghulam Hyder, Muhammad Rahim (Absconder), Abdul Rehman, Haji Muhammad Khan and Khamiso were also booked. The appellants Sher Muhammad and Muhammad Azeem for committing murder of deceased Misri and appellant Muhammad Ayoub for committing murder

of deceased Khaliqdino were convicted u/s 302 (b) PPC and sentenced them to suffer imprisonment of life with fine of Rupees 500,000/- (Five lac only) each, if recovered, to be paid to the legal heirs of deceased Misri and Khaliqdino. In default of payment of fine appellants shall suffer six months simple imprisonment. However, benefit of section 382-B Cr.P.C was extended to the appellants. Against their conviction and sentence, the appellants preferred instant Appeals.

2. During pendency of instant appeal, the complainant party/legal heirs of deceased persons have entered into compromise with the appellants and settled their dispute outside the Court on the intervention of notable persons of locality and the complainant and have pardoned/forgiven the appellants in the name of almighty Allah without any fear, force and with freewill and do not claim Qisas, Diyat Arsh, Daman amount. The parties have also filed such applications under sections 345 (2) Cr.P.C. and 345 (6) Cr.P.C. supported with the affidavits legal heirs of deceased persons Mst. Sakina widow of Ismail, Mst. Latifan widow of Khaliqdino, Akram, Mehrunnisa sons and daughter of Khaliqdino, Mst. Noor Nissa widow of Misri, Muhammad Rafique, Riaz Ahmed, Ghulam Rahim, Ms. Maryam sons and daughter of Misri, Abdul Jabbar, brother of deceased Khaliqdino, the legal heirs of deceased Khaliqdino and Misri, as well as affidavits of appellants namely, Sher Muhammad, Muhammad Ayoub, Muhammad Azeem duly verified by the NADRA.

3. Though in the compromise applications under section 345 (2) Cr.P.C. and 345 (6) Cr.P.C., there appears LTIs/signature of co-accused Abdul Rehman and Hyder Khan, who have also filed their affidavits in support of applications for compromise but record reflects that both these accused are not appellants in the instant appeals. According to learned counsel for the complainant, they after serving out their sentences have been released from Jail.

4. In order to ascertain the genuineness of the compromise arrived at between the parties, the compromise

applications were sent to the learned trial Court for inquiry and the learned 1st Additional Sessions Judge, Badin through his letter dated 16.05.2023 has submitted his report, wherein he has disclosed that statements of major legal heirs of both deceased persons were recorded, publication in daily KAWISH was made, reports from SHO PS Badin and Mukhtiarkar Revenue, Badin as well as NADRA was called. Nobody came forward to raise any objection to the compromise. In their statements, all the major legal heirs of deceased Khaliqdino and Misri have stated that they have patched up with the accused persons out of their own freewill and without coercion and they have no objection if the accused persons are acquitted; however, both the widows of deceased Khaliqdino and Misri have claimed diyat amount of the minors.

5. The applications being MA No.7893/2022 and 7894/2022 filed for appointment of guardians/walis to Mst. Noor Nissa widow of deceased Misri for minors baby Marriam, baby Zubaida and Haji Soomar; and to Mst. Latifa widow of deceased Khaliqdino for minors namely Muhammad Akram and baby Fahmeeda are **allowed**.

6. Learned counsel for the appellants contends that so far the share of Diyat amount in respect of minors is concerned, the appellants are ready to deposit the same before this Court. The appellants who are in custody have been produced and their signatures/LTIs have been obtained on the required papers, as such, the application being MA No.7897/2022 stands disposed of.

7. Today, legal heirs of deceased Khaliqdino namely, Mst. Sakina (mother) [CNIC # 44101-8393333-8], Mst. Latifan (widow) [CNIC # 44101-2256605-6], Maharunnissa (daughter) [44101-6236087-6], minors Muhammad Akram and Fahmida (son and daughter) and legal heirs of deceased Misri namely, Mst. Noorunnisa (widow) [CNIC # 44101-6739734-8], Muhammad Rafique Riaz Ahmed, Ghulam Rahim (sons) and minors baby Maryam, baby Zubaida and Haji Soomar (daughters and son) present in person have reiterated their affidavits filed in support of compromise applications and

admitted the contents thereof and their signatures to be correct and genuine. They further contended that they have compromised with the appellants due to intervention of nekmards of the locality and in order to keep good future relations they have pardoned the appellants and do not claim anything in lieu of compromise including share amount. The Guardians/Walis namely, Mst. Noor Nissa widow of deceased Misri and Mst. Latifa widow of deceased Khaliqdino have also raised no objection to the compromise application on behalf of minors legal heirs.

8. Learned counsel for complainant as well as D.P.G. have contended that the offence is compoundable and they have raised no objection for acceptance of the compromise between the parties on the ground that for future cordial relations and betterment. However, the share amount in respect of diyat of the minor legal heirs may be deposited by the appellants before this Court and same may be given to the minors on attaining their ages of majority.

9. Heard and perused the record.

10. The offences with which the appellants are convicted and sentenced are compoundable. The complainant/legal heirs of deceased persons/Walis of minors have stated that out of their freewill on the intervention of nekmards of the locality in order to keep peace and good relations they have entered into compromise and forgiven/pardoned the appellants and do not claim anything including Ars, Daman & Diyat amount in lieu of compromise. They have raised no objection for acceptance of the compromise and acquittal of the appellants. There is also no objection raised by the learned counsel for complainant and learned D.P.G. Sindh. As a result what has been stated above, the compromise between the parties appears to be without pressure or coercion, as such, permission to compound the offence is accorded and impugned judgment is set-aside. Consequently, the appellants are acquitted of the charge under section 345 (6) Cr.P.C. subject to deposit of Diyat amount in respect of shares of the minors namely Muhammad Akram aged 12/13 years (Rs.1,529,477/-), Baby Fahmeeda aged 6/7 years

(Rs.764,739/-) legal heirs/son and daughter of deceased Khaliqdino and Baby Marriam aged 16/17 years (377,871/-), Baby Zubeda aged 12/13 years (377,871/-) and Haji Soomar aged 8/9 years (Rs.755,742/-) legal heirs/son and daughters of deceased Misri, with the Accountant of this Court as per his report submitted. Once the said Diyat amount of the said minors is deposited, the Accountant of this court shall invest the same in a profitable scheme till the minors attain their ages of majority. Then the appellants namely Sher Muhammad, Muhammad Azeem and Muhammad Ayoub shall be released forthwith, if not required in any other custody case.

11. With above modification, instant both Appeals preferred against the impugned judgment stand disposed of along with listed applications.

JUDGE

Abdullah Channa/PS