

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

Criminal Appeal No.S-265 of 2018
Criminal Jail Appeal No.S-271 of 2018

1. For hearing of MA No.1470 / 2020
2. For hearing of MA No.1471 / 2020
3. For hearing of MA No.1472 / 2020

Appellant: Wazeer Ali [produced in custody from Central Prison, Hyderabad] through Mr. Asim Shabbir Soomro, Advocate along with Mr. Hatim Ali Soomro, Advocate.

Respondent: The State through Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Complainant: Complainant Ali Nawaz, Mst. Hidayat Khatoon, Mst. Sadoori along with minors namely Ahsan Ali and Mahnoor, the legal heirs of deceased present in person.

Date of hearing: 02.06.2023.

Date of Decision: 02.06.2023.

J U D G M E N T

Amjad Ali Sahito, J. Through Criminal Jail Appeal No.S-271 of 2018 and then Criminal Appeal No.S-265 of 2018, the appellant has impugned the judgment dated 02.11.2018, whereby the learned trial Court / Additional Sessions Judge, Hala convicted appellant in crime No.49 / 2017, registered at PS Saeedabad for the offence under section 302 PPC in S.C No.37 of 2017 whereby the appellant Wazeer Ali was convicted for committing murder of deceased Muhammad Ibrahim u/s 302 (b) PPC and sentenced him to suffer R.I. for life with fine of Rupees 200,000/- (Two lac only), if recovered, to be paid to the legal heirs of deceased Muhammad Ibrahim. In default of payment of fine appellant shall suffer two years simple imprisonment. However, benefit of section 382-B Cr.P.C was

extended to the appellant. Against his conviction and sentence, the appellant has preferred instant Appeals.

2. During pendency of instant appeal, the complainant party/legal heirs of deceased persons have entered into compromise with the appellant and settled their dispute outside the Court on the intervention of notable persons of locality and they have pardoned/forgiven the appellant 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 person namely, complainant Ali Nawaz, the father-in-law/maternal uncle of deceased, Mst. Sadoori [mother] and Mst.Hidayat Khatoon [widow] as well as appellant duly verified by the NADRA.

3. Since there are minor legal heirs namely Mahnoor aged about 09 years, Ahsan aged about 06 years, therefore, an application under section 345 (4) Cr.P.C. [MA No.1472/2020] has also been filed for appointment of their month namely Mst.Hidayat as Wali, which is hereby **allowed**.

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 Additional Sessions Judge, Hala through his letter dated 15.02.2021 has submitted his report, wherein he has disclosed that statements of major legal heirs of deceased were recorded, publication in daily KAWISH dated 05.02.2021 was made, reports from SHO PS Saeedabad and Mukhtiarkar Revenue, Saeedabad were called. Nobody came forward to raise any objection to the compromise. From the reports, learned trial Court found the legal heirs of deceased to be Mst. Hidayat Khatoon [widow], Mst. Sadori [mother], baby Mahoor and Ahsan Ali [daughter and son]. [Note: - Widow of deceased, Mst. Hidayat shown three minors to be Mahnoor aged about 09 years, Ahsan aged about 06 years and Noor Shama aged about 04 years in the application for her appointment as Wali; however, it is

stated that minor Noor Shama has expired. Learned counsel for appellant has also placed on record such statement]. In their statements, all the major legal heirs of deceased have stated before the learned trial Court that they have patched up with the appellant out of their own freewill and without coercion and they have no objection if the appellant is acquitted.

5. Learned counsel for the appellant contends that so far the share of Diyat amount in respect of minors [Rs.2,039,303/- share amount of minor Ahsan and Rs.1,019,652/- of the minor Mahnoor as per report submitted by Accountant of this Court] is concerned, the appellant Wazir Ali has given a residential house valuing more than the share amount of minors, situated in Village Siraj Kaka Deh Pegharo Jagir, Taluka Hala, District Hyderabad, which as per entry No.313 of deh Form-II stands in the name of one Abid Ali, the brother of appellant Wazeer Ali, to the mother of minors. Such Sanad is issued by Mukhtiarkar Goth Abad Scheme Hyderabad; however, no proper transaction was mutated in deh Form-II to such effect. Learned counsel states that since the Sanad issued under Goth Abad Scheme Hyderabad is not transferable, as such, the delivery of possession of the same is sufficient and no one shall dispossess the widow or minors. He undertakes that in case any violation for dispossession from the said residential house is made, then the widow would be at liberty to file an application before this Court for appropriate actions.

6. Today, legal heirs of deceased namely, Mst. Hidayat (widow) [CNIC # 41803-0588749-8] [as well as Wali of minors Ahsan and Mahnoor (son and daughter)], Mst. Sadori (mother) [CNIC # 41803-0575427], as well as complainant Ali Nawaz [CNIC# 41301-2665610-3] present in person have reiterated their affidavits filed in support of compromise applications and admitted the contents thereof and their RTIs to be correct and genuine. They further contended that they have compromised with the appellant due to intervention of nekmards of the locality and in order to keep good future relations they have pardoned the appellant and do not claim anything in lieu of compromise including share amount. Mst. Hidayat widow of

deceased as a Guardian/Wali of minors has also raised no objection to the compromise application on behalf of minor legal heirs. She further states that the appellant may be bound down that he will not dispossess from the given residential house in favour of minors and in case, he dispossesses her, then the compromise effected between the parties, may be cancelled.

7. Learned A.P.G. Sindh contends that the offence is compoundable and she has no objection for acceptance of the compromise between the parties on the ground of future cordial relations and betterment of the parties.

8. Heard and perused the record.

9. The offence with which the appellant is convicted and sentenced is compoundable. The complainant/legal heirs of deceased /Wali 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 appellant 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 appellant. There is also no objection raised by the learned A.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. The delivery of aforesaid residential house to the minors/widow of deceased, which is not transferable, being entered in the Form-II under Goth Abad Scheme, is accepted in lieu of Diyat share amount of the minors namely, Ahsan and Mahnoor. However, it is made clear that in case, the appellant after release from jail at any time dispossess the widow/minors of deceased from the said residential house, the compromise effected between the parties shall be cancelled and appellant will again be put in Jail, on filing of an application by the widow Mst. Hidayat. In view of the above, impugned judgment is set-aside and consequently, the appellant Wazeer Ali is acquitted of the charge under section 345 (6) Cr.P.C. He shall be released forthwith, if not required in any other custody case.

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

JUDGE

Abdullah Channa/PS