

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Jail Appeal No.96 & 70 of 2021

Date	Order with signature of Judge
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For hearing of case.
For hearing of MA No.11584/2023.
For hearing of MA No. 11585/2023

22.11.2023

Mr. Nadir Ali Brohi advocate for the appellant.
Mr. Aijaz Ahmed advocate for the complainant,
Ms. Rahat Ehsan Addl. P.G. along with Mst Jameela and Abdul Ghafoor
are present in person.

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The appellants Mehrab alias Babar, Shan Ali, and Atif Ali were sent up for trial for an offense under sections 302/147 and 149 PPC, arising out of F.I.R. No.122 of 2017 of Police Station Gharo District Thatta, and were convicted and sentenced by the learned Additional Sessions Judge –I/ Model Criminal Trial/Juvenile Court to Rigorous Imprisonment (R.I.) for life. They were also directed to pay an amount of Rs.2,00,000/- to the legal heirs of the deceased as compensation. In case of default in payment of such compensation, the convict shall undergo Simple Imprisonment(S.I.) for six months. They were also extended the benefit of Section 382-B, Cr.P.C. vide judgment dated 12.1.2021 in sessions cases No.22 and 22-A of 2018.

2. This Court vide order dated 12.10.2023, referred the matter to the trial court for the determination of compromise arrived between the parties; and, the trial court vide report dated 7.11.2023 narrated that the compromise applications filed under sections 345(2) and 345(6) Cr. P.C., accompanied by affidavits of Abdul Ghafoor and Mst. Jameelan read over and explained to them in Sindhi language and inquired from both of them about the genuineness and correctness of the contents of the compromise applications.

3. It has also come on record that both father and mother of the deceased Fayaz Ali Kumbhar, in their statements, as well as through verbal verification, categorically stated that they had forgiven the appellants namely Mehrab Khan, Shan Ali Chandio, and Aatif Ali Panhwar, in the name and for the sake of Almighty Allah. They both were specifically inquired about their intent to exercise the right of Qisas and diyat, to which both of them stated categorically terms that they did not wish to exercise any right of Qisas. They both also stated that they did not wish to receive any Diyat or compensation, in respect of their compromise with the above-named appellants. It has also come on record that both legal heirs of the deceased categorically stated that they had forgiven the accused voluntarily, with their own free will and consent, without any duress/pressure. They also stated that they did not have any objection if the above-named accused were acquitted. They also positively identified their

signatures/thumb impressions, as available on the four compromise applications, filed under section 345(2) and 345(6) Cr.P.C. in the above Appeals. They also positively identified their signatures/thumb impressions as available on the accompanying affidavits and biometric verifications recorded before the learned trial Court. They also stated that their deceased son Fayaz Ali was unmarried and that they followed the Hanafi school of thought.

4. From the above proceedings conducted by the trial Court, it transpires that no one from the public appeared before the trial Court to object to the above-mentioned applications of compromise, filed in the captioned Appeals, despite the publication of notices in daily Kawish. It has also come on record that according to the complainant/father Abdul Ghafoor and Mst. Jameelan/mother, the deceased Fayaz Ali was unmarried. It has also come on record that the complainant/father Abdul Ghafoor and Mst. Jameelan/mother filed the applications under sections 345(2) and 345(6) Cr.P.C. in both of the Appeals ie. Criminal Jail Appeal No.70/2021 and 96/2021. voluntarily, without any duress and any consideration in the shape of compensation or Diyat, and the name and for the sake of Almighty Allah.

5. The learned counsel for the appellants submits that the legal heirs of the deceased entered into a compromise with the appellants and the trial court has submitted the report and prayed for allowing this compromise application. At this stage, I enquired from the learned counsel for the appellants whether the sisters and brothers of the deceased as disclosed in the paragraph of the inquiry report can be considered as legal heirs and whether they have compromised with the appellants. Learned counsel has submitted that brothers and sisters of the deceased were/are not legal heirs of the deceased in the presence of the mother and father. In support of his contention, he relied upon the case of *Sartaj & others v Mushtaque Ahmed & others* **2006 SCMR 1916** and submitted that the Supreme Court has held in the aforesaid case that when the deceased left behind him of father mother, brothers, and sisters, the mother takes one-sixth and father takes the remainder, to the total exclusion of the brothers and sisters as such the father and mother of the deceased being his only legal heir were/are competent to enter into compromise within the contemplation of Section 345 of the Cr.P.C. In support of his submission, he referred to the table of share in Muhammadan Law by D.F Mullah according to which in the absence of the child of a son, the father inherits as a residuary. The aforesaid proposition has been endorsed by the learned counsel for the complainant as well as APG.

6. The mother and father of the deceased are present in court and state that they have pardoned the appellants in the name of Almighty Allah and waived their right of Qisad and Diyat and have no objection if the appellants are acquitted of the charge.

7. The learned A.P.G. has also gone through the compromise application and statements along with the report submitted by the trial Court and she has no objection

if the compromise application is accepted, permission is accorded, and the appellants are acquitted from the charge. Learned APG has endorsed the view of the legal heirs of the deceased.

8. In view of the compromise and the statements recorded by the trial Court during the inquiry, the compromise applications are accepted and permission to compromise is accorded. Consequently, the appellants are acquitted of the charge and the impugned judgments dated 12.1.2021 passed by the trial court in Sessions cases No.22 and 22-A of 2018 are set aside in terms of the aforesaid arrangements. The appellants shall be released forthwith if not required in any other case.

J U D G E

Shahzad Soomro